

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
27200 Agoura Road, Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Yvonne Welch
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
21
22
23
24
25
26
27
28

CASE NO: CV63506

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

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF 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 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I
3 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Yvonne Welch ("Welch" or
4 "Plaintiff") and proposed Class Counsel in this action. I have personal knowledge of the facts
5 set forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
10 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
11 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
12 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
13 2007.

14 4. Since becoming a member of the Bar, I have practiced law with my partner/father,
15 Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with an emphasis in
16 business, real estate, and employment disputes like this one. Over 75% of my practice is
17 devoted to complex employment litigation similar to the instant action.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
21 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On September 22, 2020 and on March 17, 2021, Plaintiff Welch exhausted the pre-
24 filing requirements of the California Private Attorneys General Act of 2004, Labor Code section
25 2698 et seq. ("PAGA").

26 7. On December 11, 2020, Plaintiff Welch initiated her Action in the Tuolumne
27 County Superior Court by filing a class and representative PAGA action complaint on behalf of
28 herself and all other non-exempt California employees. As subsequently amended, the Action

1 asserts class and representative action claims against Defendant for (1) failure to pay all
2 minimum and overtime wages (Labor Code §§ 510, and 1194 and the IWC Wage Orders); (2)
3 failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7 and the IWC
4 Wage Orders); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code
5 §§ 226.7, 512 and the IWC Wages Orders); (4) knowing and intentional failure to comply with
6 itemized employee wage statement provisions (Labor Code § 226); (5) failure to timely pay
7 wages at the separation of employment (Labor Code §§ 201-203); (6) violation of Business and
8 Professions Code § 17200; and (7) civil penalties pursuant to PAGA and specifically under
9 Labor Code § 2699(f) for underlying violations of the Labor Code, including but not limited to
10 Labor Code §§ 201, 202, 226(a), 226.7, 510, 512 and 1194, and pursuant to Labor Code §
11 2699(a) for underlying violations of the Labor Code §§ 226.3 and 558.

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

25 9. The Class Representative contends that Defendant violated the California Labor
26 Code and that this case is appropriate for class certification.

27 \\\

28 \\\

1 **Investigation And Settlement Discussions:**

2 10. My office conducted a thorough investigation into the facts and law at issue in this
3 case, including the exchange of informal discovery and the review and verification of statistical
4 data and other facts and information provided by Defendant. My office investigated the
5 applicable law as applied to the facts discovered regarding the alleged claims of Plaintiff and
6 potential defenses thereto, and the damages claimed by Plaintiff.

7 11. On March 16, 2021, the Parties participated in a full day mediation session with
8 Brett Sutton, Esq., a respected mediator with extensive experience litigating and resolving
9 employment wage and hour class actions. The mediation culminated with an agreement to
10 resolve the Action, assisted by the evaluative efforts of Mr. Sutton.

11 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

12 **Litigation:**

13 12. Based on our independent investigation and evaluation, my colleagues and I are of
14 the opinion that settlement for the consideration and on the terms set forth in the Settlement
15 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
16 light of all known facts and circumstances, including the risk of significant delay, the risk the
17 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

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

26 14. The Parties have jointly prepared the Settlement Agreement and Release of Claims
27 ("Settlement Agreement" or "Stipulation of Settlement" or "Stip."), attached hereto as **Exhibit**
28 **B.** All of the terms of the Parties' settlement are contained within the Settlement Agreement. At

1 all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's
2 length.

3 15. My office created a comprehensive damage analysis using sampling information
4 obtained through informal discovery. This damage analysis reveals that the negotiated
5 settlement falls within a realistic range of recovery on class members' claims.

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

15 17. Defendant allegedly failed to permit or authorize Plaintiff and Class Members to
16 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
17 Code §§ 226.7, 512, 558 and IWC Wage Order 5-2001. Labor Code § 512 provides that
18 employers (like Defendant) may not employ an employee for a work period of more than 5 hours
19 without providing a 30-minute meal period starting no later than the end of the fifth hour.
20 Plaintiff and Class Members contend that they were routinely unable to take a proper meal break
21 when they worked shifts in excess of 5 hours in duration and a second meal break when they
22 worked shifts in excess of 10 hours in duration. When Plaintiff and Class Members did receive a
23 meal period, they were typically late, cut short, or interrupted, requiring them to work during
24 their meal periods. This violates Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2 and
25 IWC Wage Order 5-2001. This claim, Plaintiff learned, was weak because Defendant paid over
26 \$240,000 in meal period premiums during the class period, potentially demonstrating a policy
27 that denied meal periods were frequently compensated with a meal period premium. Plaintiff
28 alleges that \$354,000 in meal period premium wages are due and remain unpaid. This claim,

1 however, required a discount for settlement purposes. Defendant raised numerous defenses,
2 including that it authorized and provided all meal periods and that employees waived any meal
3 periods not taken. The settlement reflects a fair and reasonable compromise of this claim.

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

14 19. Class Members also sought wage statement penalties pursuant to Labor Code §
15 226(e), waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of
16 the underlying violations alleged. The value of these penalties – which are derivative,
17 discretionary, and subject to defenses of their own – could be substantial, but their recovery
18 carried substantial risk.

19 20. Under new applicable case law, it became unlikely that Plaintiff would recover on
20 her derivative waiting time penalty and wage statement penalty claims because the Court could
21 find that they will not stem from meal and rest break claims (and only a small group of Class
22 Members were denied overtime wages). It is also possible that, because these are derivative
23 claims (i.e. Plaintiff must prevail on her underlying unpaid wage, meal and rest break claims to
24 recover on these penalty claims) and subject to defenses to good faith and willfulness, Plaintiff
25 would not recover on them at all even if they were not otherwise barred by applicable case law.
26 As a result, Plaintiff gave them a discounted value for settlement purposes.

27 21. A discount on the maximum value of Class members' claims was required (and
28 warranted) to resolve the matter at this junction. Class certification is a substantial risk in any

1 class action case. Here, while Plaintiff maintains that the requirements of class certification are
2 met, Defendant proffers various arguments why class treatment is not appropriate here, including
3 but not limited to that individualized inquires among class members predominate over common
4 ones – particularly with respect to Plaintiff's rest period claims. If Defendant were to defeat
5 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most
6 class members would likely not file individual claims.

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

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

16 24. When the costs and risks of non-certification and loss on the merits are considered,
17 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

18 25. The settlement for each participating Class Member is fair, reasonable and
19 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
20 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
21 as alleged in the Action.

22 **Class Certification Requirements:**

23 26. To date, no class has been certified. The Stipulation of Settlement contains a
24 provision pursuant to which we stipulate to the Court's provisional certification of the
25 approximately 650-member Settlement Class, but do so for purposes of this settlement only.

26 27. Plaintiff contends that class certification is appropriate here. In this case, the Class
27 Members are identifiable from Defendant's employment and payroll records. Further, the
28

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

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

8 29. In this case, named Plaintiff and proposed Class Representative Yvonne Welch is a
9 former non-exempt employee who worked for Defendant in the State of California during the
10 applicable class period. She contends that Defendant failed to pay all wages, failed to provide
11 meal and rest periods, failed to comply with itemized employee wage statement provisions, and
12 failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-
13 203, 226(a), 226.7, 510, 512, 1194, 2698, 2699, and Business & Professions Code § 17200. She
14 has the same claims as those that the members of the Settlement Class would reasonably be
15 expected to bring based on the course of conduct alleged herein.

16 30. Plaintiff Welch has also demonstrated that she will aggressively and competently
17 assert the interests of the proposed Settlement Class; she has taken an active role in this litigation
18 and has no apparent conflicts with other class members.

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

20 31. My office submitted the Motion for Preliminary Approval ("MPA") and
21 supporting documentation, including the Settlement Agreement, to the LWDA via electronic
22 submission in compliance with Labor Code § 2699(1)(2) concurrently with the filing of the
23 motion with this Court.

24 I declare, under penalty of perjury, under the laws of the State of California, that the
25 foregoing is true and correct. Executed this 18th day of May, 2021 at Calabasas, California.

26 
27 DANIEL F. GAINES
28

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaience OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Yvonne Welch

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF TUOLUMNE**
10

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

13 Plaintiff,

14 v.

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

17 Defendants.
18

CASE NO: CV63506

**SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

Complaint Filed: December 11, 2020

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

A. Definitions.

B. General.

- 2 -

2. On December 11, 2020, Plaintiff Welch initiated her Action in the Tuolumne County Superior Court by filing a class and representative PAGA action complaint on behalf of herself and all other non-exempt California employees. As subsequently amended, the Action asserts class and representative action claims against Defendant for (1) failure to pay all minimum and overtime wages (Labor Code §§ 510, and 1194 and the IWC Wage Orders); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7 and the IWC Wage Orders); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512 and the IWC Wage Orders); (4) knowing and intentional failure to comply with itemized employee wage statement provisions (Labor Code § 226); (5) failure to timely pay wages at the separation of employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code § 17200; and (7) civil penalties pursuant to PAGA and specifically under Labor Code § 2699(f) for underlying violations of the Labor Code, including but not limited to Labor Code §§ 201, 202, 226(a), 226.7, 510, 512 and 1194, and pursuant to Labor Code § 2699(a) for underlying violations of the Labor Code §§ 226.3 and 558.

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

1 4. The Class Representative contends that Defendant violated the California Labor
2 Code and that this case is appropriate for class certification.

3 5. Class Counsel have conducted a thorough investigation into the facts and law at
4 issue in this case, including the exchange of informal discovery and the review and verification of
5 statistical data and other facts and information provided by Defendant. Counsel for the Parties
6 also represent that they have investigated the applicable law as applied to the facts discovered
7 regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages claimed
8 by Plaintiffs.

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

13 7. Based on their own independent investigation and evaluation, Class Counsel are of
14 the opinion (and will so represent to the Court) that settlement for the consideration and on the
15 terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best
16 interest of the Settlement Class in light of all known facts and circumstances, including the risk of
17 significant delay, the risk the Settlement Class will not be certified by the Court, and the defenses
18 asserted by Defendant. Defendant and its counsel also agree (and will so represent to the Court)
19 that this Settlement Agreement is fair and in the best interest of the Settlement Class.

20 8. The Parties agree that the Settlement Class described herein may be certified for
21 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
22 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
23 approved, the certification will have no force or effect and will immediately be revoked. The
24 Parties further agree that certification for purposes of approving the Settlement Agreement is in
25 no way an admission that class certification is proper under the more stringent standard applied
26 for litigation and that evidence of this limited stipulation for settlement purposes only will not be
27 admissible for any purpose in this or any other proceeding.

1 **C. Terms of Settlement.**

2 1. The financial terms of the Settlement Agreement are as follows:

3 (a) **Maximum Settlement Amount:** The Parties agree to settle the Action for
4 a non-reversionary Maximum Settlement Amount of Six Hundred Thousand U.S. Dollars
5 (\$600,000.00) ("the Maximum Settlement Amount"). The Maximum Settlement Amount
6 includes all payments for wages, penalties, and interest; the attorneys' fees of Class Counsel;
7 litigation costs and expenses of Class Counsel (which includes, without limitation, all such fees
8 and costs incurred to date, as well as such fees and costs to be incurred in documenting the
9 Settlement Agreement, providing any notices required as part of the Settlement Agreement,
10 securing Court approval of the Settlement Agreement, and obtaining judgment in the Action); the
11 service payment to the Class Representative, as approved by the Court; the payment to the
12 California Labor and Workforce Development Agency ("LWDA") pursuant to the PAGA claims
13 in the Action; and all costs of administration, including, without limitation, settlement
14 administration fees. Defendant shall pay all employer payroll tax obligations due on wage
15 payments made from the Net Settlement Proceeds in addition to, and separate and apart from, the
16 Maximum Settlement Amount. If the final number of pay periods worked by Class Members is
17 more than 11,000 during the Class Period, the Maximum Settlement Amount shall increase
18 proportionately for each pay period in excess of 11,000 (i.e., if the final pay periods are 12,100,
19 each pay period in excess of 11,000 shall yield a 00.909% increase to the Maximum Settlement
20 Amount).

21 (b) **Net Settlement Proceeds:** "Net Settlement Proceeds" is defined as the
22 Maximum Settlement Amount less the amounts approved and awarded by the Court as follows:
23 (1) attorneys' fees and documented litigation costs and expenses incurred or advanced by Class
24 Counsel; (2) the service payment to the Class Representative; (3) the payment to the LWDA
25 pursuant to PAGA; and (4) the costs of administering the Settlement Agreement.

26 (c) **Calculation of the Individual Payment Amounts:** "Individual Payment
27 Amount" means the portion of the Net Settlement Proceeds distributable to each Class Member
28 who participates in the Settlement (i.e., who does not submit a valid Request for Exclusion Form).

1 The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by
2 the total pay periods worked by all participating Class Members during all periods of time they
3 were employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland,
4 California during the Release Period, which will yield the pay period rate. The pay period rate
5 shall be multiplied by the number of pay periods each individual participating Class Member was
6 employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California
7 during the Release Period to yield their Individual Payment Amount. Each Class Member who
8 does not opt out of the Settlement shall be paid an Individual Payment Amount. All pay period
9 calculations herein shall be made by reference to Class Members' hire and termination dates and
10 payroll data contained in the records kept by Defendant in the ordinary course of business during
11 the applicable time periods.

12 i. For tax purposes, each Individual Payment Amount will be
13 apportioned (a) 33-1/3% to wages (reported on an IRS Form W-2 and subject to applicable
14 withholdings/taxes); (b) 33-1/3% to penalties (reported on an IRS Form 1099, if required); and (c)
15 33-1/3% to interest (reported on an IRS Form 1099, if required). All Individual Payment
16 Amounts paid to Class Members will be subject to any applicable employee-side payroll taxes,
17 wage garnishments, liens, or other legally mandated treatment as required by law.

18 (d) **PAGA Payments:** The Parties agree that Twenty Thousand Dollars
19 (\$20,000.00) shall be allocated to settle Plaintiff's claims brought pursuant to PAGA. Of this
20 amount, Seventy-Five Percent (75%), or Fifteen Thousand Dollars (\$15,000.00) shall be paid to
21 the LWDA, and Twenty-Five Percent (25%), or Five Thousand Dollars (\$5,000.00) shall be paid
22 to Class Members who have not submitted a valid and timely request for exclusion form
23 ("Request for Exclusion Form") as part of the Net Settlement Proceeds.

24 (e) **Service Payment to Class Representative:** The amount awarded to the
25 Class Representative as service payment will be set by the Court in its discretion, not to exceed
26 Twelve Thousand Dollars (\$12,000.00). This amount will be deducted from the Maximum
27 Settlement Amount. An IRS Form 1099 will be issued to the Class Representative for her service
28

1 payment. Defendant agrees not to dispute or otherwise object to the service payment if Plaintiff
2 requests \$12,000 or less.

3 (f) **Attorneys' Fees:** An award to Class Counsel of attorneys' fees will be
4 deducted from the Maximum Settlement Amount in an amount to be set by the Court taking into
5 account the settlement award that has been made available for the Settlement Class by the efforts
6 of Class Counsel. The amount awarded shall not exceed 40% of the Maximum Settlement
7 Amount, which is projected to be Two Hundred Forty Thousand Dollars (\$240,000.00) based on
8 the Maximum Settlement Amount of \$600,000. An IRS Form 1099 will be issued to Class
9 Counsel with respect to its award of attorneys' fees. Defendant agrees not to dispute or otherwise
10 object to the attorneys' fee award requested by Class Counsel so long as the request does not
11 exceed 40% of the Maximum Settlement Amount.

12 (g) **Attorneys' Costs and Expenses:** Class Counsel will be reimbursed from
13 the Maximum Settlement Amount in an amount to be set by the Court for documented out-of-
14 pocket litigation costs and expenses, not to exceed Ten Thousand Dollars (\$10,000). An IRS
15 Form 1099 will be issued to Class Counsel with respect to its award of costs and expenses.
16 Defendant agrees not to dispute or otherwise object to the attorneys' cost award requested by
17 Class Counsel so long as the request does not exceed \$10,000.

18 (h) **Settlement Administration Costs:** The fees and other charges of the
19 Settlement Administrator to administer the Settlement are expected to total no more than Ten
20 Thousand Dollars (\$10,000.00) and will be paid from the Maximum Settlement Amount. These
21 fees shall include any costs associated with the required tax reporting on any Individual Payment
22 Amounts, and the issuing of any and all W-2 and 1099 forms. Subject to approval of the Court,
23 the Parties have agreed that ILYM Group, Inc. will serve as a neutral third-party claims'
24 administrator ("Settlement Administrator") to perform all acts related to providing notice to the
25 Settlement Class. Settlement Administrator shall be responsible for (a) printing and distributing
26 the Court-approved Notice of Class Action Settlement ("Class Notice") to all Class Members; (b)
27 administering the settlement; (c) processing exclusions and objections; (d) resolving disputes
28 based upon Defendant's records; (e) distributing the Maximum Settlement Amount as directed by

1 the Court and set forth herein; (f) tax reporting; (g) providing weekly status reports to the Parties
2 and providing declarations, as needed, to the Court, regarding the status of settlement
3 administration. Such weekly status reports shall include, at a minimum: (i) the number of Class
4 Members who have submitted timely, valid Request for Exclusion Forms and/or Objections; (ii)
5 whether any Class Member has submitted a challenge to any other information contained in the
6 Notice; and (iii) statistics showing which disputes that have been resolved and which have not
7 been resolved. Additionally, the Claims Administrator will provide to counsel for both Parties
8 any updated reports as needed or requested; and (h) other duties and responsibilities set forth
9 herein,

10 (i) **No Warranty by Defendant:** Plaintiff understands and agrees that
11 Defendant is not providing Plaintiff or Class Members with tax or legal advice and that Defendant
12 makes no representations regarding tax obligations or consequences, if any, related to this
13 Settlement Agreement or the settlement.

14 **D. Release of Claims.**

15 1. **Class Members.** Upon the Effective Date, and subject to Defendant's full
16 payment of the Maximum Settlement Amount and related employer-side taxes, Plaintiff and all
17 Class Members who do not timely opt-out of the Settlement will be deemed to have fully
18 released and discharged Defendant and any and all of its past, present or future officers, owners,
19 directors, shareholders, members, partners, principals, agents, employees, insurers, accountants,
20 attorneys, parent companies, subsidiaries, affiliated corporations and entities, assigns,
21 successors, and predecessors ("Released Parties") from any and all claims alleged in the Action,
22 or which could have been alleged based on the facts set forth in the operative complaint, during
23 all periods of time they were employed in a non-exempt position at Defendant's Rush Creek
24 Lodge in Groveland, California during the Release Period.

25 Plaintiff's Release of Claims and General Release. As of the Effective Date of the
26 Settlement, Plaintiff shall give the following general release of claims for herself and her
27 respective spouse, heirs, successors, and assigns, forever releasing the Released Parties from any
28 and all charges, complaints, claims, liabilities, obligations, promises, controversies, damages,

1 causes of action, suits, rights, demands, costs, losses or debts of any nature whatsoever, from the
2 beginning of time through the date of her signature on this Agreement, whether known or
3 unknown, suspected or unsuspected, whether in tort, contract, equity or otherwise, for violation of
4 any federal, state or local statute, rule, ordinance or regulation, including but not limited to all
5 claims arising out of or in any way relating to her employment with Defendant. In furtherance of
6 this settlement, Plaintiff waives any rights she may have California Civil Code section 1542,
7 which provides:

8 A general release does not extend to claims that the creditor or releasing party
9 does not know or suspect to exist in his or his favor at the time of executing the
10 release and that, if known by him or his, would have materially affected his or
11 his settlement with the debtor or released party.

12
13 **E. Notice and Exclusion Process.**

14 1. Within fourteen (14) calendar days after entry of the order granting preliminary
15 approval, Defendant shall provide to the Settlement Administrator a list of all Class Members,
16 including their last known addresses, telephone numbers, Social Security numbers, and their dates
17 of employment in a non-exempt position at Defendant's Rush Creek Lodge in Groveland,
18 California during the Release Period ("Settlement Class Information"). The names, addresses,
19 telephone numbers, and Social Security numbers will only be disclosed to the Settlement
20 Administrator and not to Plaintiff's Counsel. All information provided to the Settlement
21 Administrator will be marked CONFIDENTIAL. This information shall be kept confidential and
22 shall not be disclosed, either in writing or orally, by the Settlement Administrator. The
23 Settlement Administrator shall use due care with respect to the storage, custody, use, and/or
24 dissemination of the confidential information. Such information must be stored in a secure
25 fashion and all persons who access the data must agree to keep it confidential.

26 2. A notice of pendency of class action, proposed settlement and hearing date for
27 Court approval ("Class Notice") in the form attached hereto as Exhibit 1, and as approved by the
28 Court, shall be sent by the Settlement Administrator to the Class Members in English only, by

1 first class mail, within twenty-one (21) calendar days after entry of the order granting preliminary
2 approval. Attached to the Class Notice will be a Request for Exclusion Form in the form attached
3 hereto as Exhibit 2.

4 3. The Settlement Administrator will make reasonable efforts to ensure that the Class
5 Notice and Request for Exclusion Form are sent to all Class Members. It will conclusively be
6 presumed that if an envelope has not been returned within thirty (30) days of the mailing that the
7 Class Member received the Class Notice. In the event of returned or non-deliverable notices, the
8 Settlement Administrator will make reasonable efforts to locate Class Members and re-send the
9 notices.

10 4. Each Class Member will be fully advised of the Settlement Agreement, the ability
11 to object to the Settlement Agreement, and the ability to submit a Request for Exclusion Form.
12 The Class Notice will inform the Class Members of the Court-established deadlines for filing
13 objections and a Request for Exclusion Form.

14 5. Each Class Notice will contain personalized information setting forth the total
15 number of pay periods worked by each Class Member in a non-exempt position at Defendant's
16 Rush Creek Lodge in Groveland, California during the Release Period and their estimated
17 Individual Payment Amount. To the extent a Class Member disputes any of the information
18 listed on his or her Class Notice, the Class Member may produce evidence to the Settlement
19 Administrator showing such information the Class Member contends should be reflected in the
20 Class Notice. Defendant's records will be presumed determinative, however, and the Settlement
21 Administrator's decision on these matters will be final. The Class Notice will also set forth IRS
22 W-9 information if required.

23 6. All Class Members who do not submit a Request for Exclusion Form will be
24 eligible to receive an Individual Payment Amount, which shall be mailed to them if and when the
25 Effective Date occurs.

26 7. In order to elect not to participate in the Settlement, a Class Member must submit a
27 Request for Exclusion Form, and mail it to the Settlement Administrator no later than forty-five
28 (45) calendar days after the initial mailing of the Class Notice and Request for Exclusion Form to

1 Class Members, unless the Court requires a longer period, in which case the Court ordered
2 exclusion period will apply. The date of the postmark shall be deemed the date of submission.
3 The timeliness of submitted Request for Exclusion Forms will be determined by valid postmark.
4 If the 45th day falls on a Sunday or federal holiday, the time to request exclusion will be extended
5 to the next day on which the U.S. Postal Service is open.

6 8. The deadline for submission of Request for Exclusion Forms shall be extended
7 once by 30 days for those Class Members whose Class Notice and Request for Exclusion Form
8 are returned as "undeliverable." If the 30th day falls on a Sunday or federal holiday, this deadline
9 will be extended to the next day on which the U.S. Postal Service is open.

10 9. The Settlement Administrator will search for additional addresses on returned mail
11 and will re-mail the Class Notice and Request for Exclusion Form to an updated address (if any)
12 within 15 days of receipt of the returned mail. The 30-day extended time limit will run from the
13 date of the second mailing for those Class Members. To the extent a Class Notice from the initial
14 mailing is not returned within 30 days, it shall be deemed to have been sent to a valid address
15 even if it is thereafter returned. It is the intent of the Parties that reasonable, but not
16 extraordinary, efforts be used to locate Class Members. If the initial Class Notice and Request for
17 Exclusion form is returned, the Settlement Administrator will search using the Social Security
18 number for a more current address. If no address is found within 10 days, no further action is
19 required.

20 10. Following the initial mailing of the Class Notice and Request for Exclusion Forms
21 to Class Members, the Settlement Administrator will provide weekly reports to the Parties of the
22 total number of valid Request for Exclusion Forms. The last such report will be provided within
23 ten (10) calendar days after the deadline for receipt of the Request for Exclusion Forms (fifty-five
24 (55) days following the initial mailing of the Class Notice and Request for Exclusion Forms to
25 Class Members).

26 11. In order to object to the Settlement Agreement, a Class Member must mail his or
27 her objection to the Settlement Administrator no later than forty-five (45) calendar days after the
28 mailing of the Class Notice and Request for Exclusion Form to Class Members, unless the Court

1 requires a longer period, in which case the Court ordered objection period will apply. If the 45th
2 day falls on a Sunday or federal holiday, the time to object to the Settlement Agreement will be
3 extended to the next day on which the U.S. Postal Service is open. Under no circumstances shall
4 the objection deadline be extended for any reason.

5 12. The Settlement Administrator shall provide to the Parties, at least twelve (12)
6 calendar days prior to the final approval hearing, or as otherwise ordered by the Court, a
7 declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice
8 and Request for Exclusion Forms. The Settlement Administrator will also provide to the Parties,
9 at least twelve (12) calendar days prior to the final approval hearing, or as otherwise ordered by
10 the Court, a report listing the amount of all payments to be made to each Class Member without
11 names or personal identifying information.

12 **F. Deposit of the Maximum Settlement Amount**

13 1. Defendant shall pay half of its total financial obligation under this Agreement
14 (approximately \$300,000 plus half of the total employer side payroll taxes due on wage payments
15 made hereunder) to the Settlement Administrator no later than ten (10) calendar days after the
16 Effective Date. Defendant shall pay the balance of its total financial obligation under this
17 Agreement (approximately \$300,000 plus the second half of the total employer side payroll taxes
18 due on wage payments made hereunder) no later than one hundred eighty (180) calendar days
19 after the Effective Date. "Effective Date" means the date when the order entered by the Court
20 granting final approval of the Settlement and judgment thereon ("Final Approval Order")
21 becomes final. For purposes of this Settlement Agreement, the Final Approval Order becomes
22 "final": (1) if there are no objectors, the day the Court enters the Final Approval Order; (2) if
23 there are any objectors and the date or time to appeal or seek permission to appeal or seek other
24 judicial review of the Final Approval Order/the Entry of Judgment approving the Settlement
25 Agreement has expired with no appeal or other judicial review having been taken or sought, 61
26 days after the Court enters the order of final approval; or (3) if an appeal or other judicial
27 review has been taken or sought within 61 days after the Court enters the Final Approval Order,
28 the date all objections or appeals are withdrawn, the Final Approval Order/Entry of Judgment is

1 finally affirmed or other judicial review therefrom, or the date the appeal(s) or other judicial
2 review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial
3 review.” In the event that the Court does not approve the Settlement, or if the Final Approval
4 Order is reversed on appeal, then there shall be no Effective Date and this Settlement
5 Agreement shall become null and void.

6 **G. Disbursement of the Maximum Settlement Amount**

7 1. No later than fifteen (15) calendar days after Defendant makes each deposit of the
8 Maximum Settlement Amount, the Settlement Administrator shall disburse pro-rata to (1)
9 Settlement Class Members, (2) Class Counsel, (3) Plaintiff, (4) the LWDA, and (5) itself.

10 2. Class Members must cash each of their Individual Payment Amount checks
11 within one year after they are mailed by the Settlement Administrator. The value of any checks
12 uncashed more than one year after mailing shall be paid to the State of California Controller’s
13 Office – Unclaimed Property Fund, to be held in the name of the respective Class Member.

14 **H. Duties of the Parties Prior to Court Approval.**

15 1. Promptly after execution of this Settlement Agreement, Plaintiff shall move the
16 Court for preliminary approval of this Settlement Agreement and entry of an order
17 accomplishing the following:

- 18 (a) scheduling a fairness hearing on the question of whether the proposed
19 Settlement Agreement should be finally approved as fair, reasonable and
20 adequate as to the Class Members;
- 21 (b) approving as to form and content the proposed Class Notice;
- 22 (c) approving as to form and content the proposed Request for Exclusion
23 Form;
- 24 (d) preliminarily certifying the Settlement Class for purposes of approving
25 the Settlement Agreement;
- 26 (e) preliminarily approving the PAGA payment of \$15,000.00 to the LWDA;
- 27 (f) preliminarily setting attorneys’ fees and costs payable to Class Counsel;
- 28 (g) preliminarily setting the service payment to the Class Representative;

1 and

2 (h) preliminarily approving ILYM Group, Inc. as the Settlement
3 Administrator and its estimated fees and costs of \$10,000.00.

4 The Parties shall submit this Settlement Agreement to the Court and the LWDA in support
5 of Plaintiff's unopposed motion for preliminary approval of the Settlement Agreement.

6 **I. Duties of the Parties in Connection with and Following Final Court Approval.**

7 1. In connection with the hearing on final approval of the Settlement Agreement, the
8 Parties will submit a proposed final order no later than ten (10) calendar days prior to the
9 scheduled date of the hearing on final approval (unless otherwise ordered by the Court):

10 (a) approving the Settlement Agreement, adjudging the terms thereof to be
11 fair, reasonable and adequate, and directing consummation of its terms and
12 provisions;

13 (b) approving Class Counsel's application for an award of attorneys' fees
14 and reimbursement of documented litigation costs and expenses, the
15 service payment to the Class Representative, the payment to the LWDA,
16 and the costs of administering the Settlement Agreement; and

17 (c) Entering judgment in the Action in accordance with this Stipulation,
18 pursuant to Cal. Rules of Court, Rule 3.769(h).

19 2. Class Counsel shall file an application for attorneys' fees and reimbursement of
20 costs and expenses no later than ten (10) calendar days prior to the scheduled date of the hearing
21 on final approval (unless otherwise ordered by the Court).

22 **J. Miscellaneous Provisions:**

23 1. **Voiding the Agreement**

24 A failure of the Court to approve any material condition of this Settlement Agreement
25 which effects "a fundamental change of the Parties' settlement of the Action," or if the settlement
26 of the Action is reversed or materially modified on appellate review, shall render the entire
27

1 Stipulation of Settlement voidable and unenforceable as to all Parties herein at the option of any
2 Party.

3 **2. Time is Of the Essence; Default; Notice; Cure and Acceleration**

4 Time is of the essence with respect to all terms of this Settlement Agreement. If
5 Defendant fails to timely make any payment required hereunder, it shall be in default of its
6 obligations, and Plaintiff shall give notice of the default to Defendant's Counsel in writing. If the
7 default remains uncured for five (5) or more business days after notice, all unpaid sums shall be
8 accelerated and become due and payable, with interest at the legal rate from the Effective Date.

9 **3. Parties' Authority.**

10 The signatories hereto represent that they are fully authorized to enter into this Settlement
11 Agreement and bind the Parties hereto to the terms and conditions hereof.

12 **4. Mutual Full Cooperation.**

13 The Parties agree to fully cooperate with each other to accomplish the terms of this
14 Stipulation of Settlement Agreement and Release of Claims, including but not limited to,
15 execution of such documents and such other action as may reasonably be necessary to implement
16 the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
17 best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts
18 that may become necessary by order of the Court, or otherwise, to effectuate this Settlement
19 Agreement and the terms set forth herein. As soon as practicable after execution of this
20 Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
21 its counsel, take all necessary steps to secure the Court's preliminary and final approval of the
22 Settlement Agreement.

23 **5. No Prior Assignments.**

24 The Parties hereto represent, covenant, and warrant that they have not directly or
25 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
26 person or entity any portion of any liability, claim, demand, action, cause of action or rights
27 released and discharged by this Settlement Agreement and Release of Claims.

1 **6. No Admission.**

2 Nothing contained herein, nor the consummation of this Settlement Agreement and
3 Release of Claims, is to be construed or deemed an admission of liability, culpability, negligence,
4 or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties
5 hereto has entered into this Settlement Agreement with the intention of avoiding further disputes
6 and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a
7 settlement document and shall, pursuant to California Evidence Code section 1152 and/or Federal
8 Rule of Evidence 408 and/or any other similar law, be inadmissible in evidence in any
9 proceeding, except an action or proceeding to approve the settlement of the Action and/or
10 interpret or enforce this Settlement Agreement.

11 **7. Notices.**

12 Unless otherwise specifically provided herein, all notices, demands or other
13 communications given hereunder shall be in writing and shall be deemed to have been duly given
14 as of the third business day after mailing by United States registered or certified mail, return
15 receipt requested, addressed:

16 **To Plaintiff and the Settlement Class:**

17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 GAINES & GAINES, APLC
20 27200 Agoura Road, Suite 101
21 Calabasas, CA 91301
22 attorneys@gaineslawfirm.com

23 **To Defendant:**

24 Christina Cusimano Tillman, Esq.
25 McCormick Barstow LLP
26 7647 North Fresno Street
27 Fresno, CA 93720
28 christina.tillman@mccormickbarstow.com

8. Construction.

 The Parties hereto agree that the terms and conditions of this Settlement Agreement are
the result of lengthy, intensive arms' length negotiations between the Parties and that this
Settlement Agreement shall not be construed in favor of or against any Party by reason of the

1 extent to which any Party or his/her or its counsel participated in the drafting of this Settlement
2 Agreement.

3 **9. Captions and Interpretations.**

4 Paragraph titles or captions contained herein are inserted as a matter of convenience and
5 for reference, and in no way define, limit, extend, or describe the scope of this Settlement
6 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and
7 not merely a recital.

8 **10. Modification.**

9 This Settlement Agreement may not be changed, altered, or modified, except in writing
10 and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not
11 be discharged except by performance in accordance with its terms or by a writing signed by each
12 of the Parties hereto on their attorneys.

13 **11. Integration Clause.**

14 This Settlement Agreement contains the entire agreement between the Parties relating to
15 the settlement of the Action and transactions contemplated hereby, and all prior or
16 contemporaneous agreements, understandings, representations, and statements, whether oral or
17 written and whether by a Party or such Party's legal counsel, are merged herein. No rights
18 hereunder may be waived except in writing.

19 **12. Binding on Assigns.**

20 This Settlement Agreement shall be binding upon and inure to the benefit of the Parties
21 hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

22 **13. Governing Law.**

23 All terms of this Settlement Agreement and its exhibits shall be governed by and
24 interpreted according to the laws of the State of California, without giving effect to any conflict of
25 law principles or choice of law principles.

26 **14. Signatures of All Class Members Unnecessary to be Binding.**

27 It is agreed that, because the members of the Settlement Class are numerous, it is
28 impossible or impractical to have each Class Member execute this Settlement Agreement. The

1 Class Notice, attached hereto as Exhibit 1, will advise all Class Members of the binding nature of
2 the release provided herein and such shall have the same force and effect as if this Settlement
3 Agreement was executed by each Class Member.

4 **15. Counterparts.**

5 This Settlement Agreement may be executed in counterparts, and when each Party has
6 signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
7 and when taken together with other signed counterparts, shall constitute one fully-signed
8 Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile,
9 PDF, DocuSign or other electronic signature shall be effective and is deemed to be an original.

10 **16. Confidentiality**

11 Until Plaintiff files her motion for preliminary approval of the class action settlement of
12 the Action, the Parties and their Counsel agree to maintain confidentiality as to the Settlement
13 Agreement, including the amount and terms of the Settlement, except as to spouses, tax or
14 financial advisors, attorneys, taxing agencies, or as otherwise required by law.

15 **17. No Publicity**

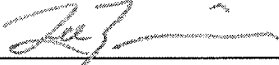
16 Plaintiff and her Counsel will not contact the media about the Settlement Agreement or
17 respond to any inquiries by the media regarding the Settlement, other than to state that the matter
18 was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also
19 will not post any information about the Settlement Agreement on social media or their firms'
20 websites.

21 Dated: March __, 2021

22 By: _____
23 YVONNE WELCH
24 Plaintiff and Class Representative

25 Dated: March __, 2021

26 FIRST LIGHT RESORTS, LLC

27 By:  _____
28 Name: Lee Zimmerman
Title: Manager

Class Notice, attached hereto as Exhibit 1, will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Settlement Agreement was executed by each Class Member.

15. Counterparts.

This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. A facsimile, PDF, DocuSign or other electronic signature shall be effective and is deemed to be an original.

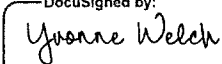
16. Confidentiality

Until Plaintiff files her motion for preliminary approval of the class action settlement of the Action, the Parties and their Counsel agree to maintain confidentiality as to the Settlement Agreement, including the amount and terms of the Settlement, except as to spouses, tax or financial advisors, attorneys, taxing agencies, or as otherwise required by law.

17. No Publicity

Plaintiff and her Counsel will not contact the media about the Settlement Agreement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendant liable. Plaintiff and her Counsel also will not post any information about the Settlement Agreement on social media or their firms' websites.

Dated: April 6, 2021
March __, 2021

DocuSigned by:

By: 234079562C5B4DE...
YVONNE WELCH
Plaintiff and Class Representative

Dated: March __, 2021

FIRST LIGHT RESORTS, LLC

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April 6, 2021

GAINES & GAINES, APLC

By: Daniel F. Gaines

Daniel F. Gaines, Esq.

Alex P. Katofsky, Esq.

Counsel for Plaintiff Welch and Proposed
Class Counsel

May 10, 2021

Dated: March , 2021

McCORMICK

By: 

Christina Cusimano Tillman, Esq.

Counsel for Defendant First Light Resorts,
LLC

EXHIBIT 1

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TUOLUMNE**

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

Plaintiff,

v.

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

Defendants.

CASE NO: CV63506

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

**NOTICE OF PENDENCY OF CLASS
ACTION SETTLEMENT AND FINAL
HEARING**

Action Filed: December 11, 2020

**YOU MAY BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.
PLEASE READ THIS NOTICE CAREFULLY.**

A California Court authorized this notice. This is not a solicitation from an attorney.

- Plaintiff Yvonne Welch (“Plaintiff”) and Defendant First Light Resorts, LLC (“Defendant”) have reached a settlement whereby Defendant has agreed to pay the total amount of \$600,000 to settle claims among those persons employed in a non-exempt position at Rush Creek Lodge in Groveland, California between December 11, 2016 and March 16, 2021. The amount of the settlement to be paid to current and former employees will be approximately \$313,000, after accounting for fees, costs and other payments as described in this notice.
- The settlement resolves a lawsuit over whether Defendant failed to provide meal periods, failed to provide rest periods, failed to pay all wages, failed to timely pay wages upon separation of employment, and failed to provide accurate itemized wage statements. It avoids costs and risks to you, Plaintiff and Defendant from continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Attorneys for the employees will ask the Court to award them up to 40% of the Maximum Settlement Amount as attorneys’ fees (\$240,000) and \$10,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.
- **Your legal rights are affected whether you act or do not act. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were brought in this case.
Object	Write to the Court about why you don't like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class and representative action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class/representative group on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On December 11, 2020, Plaintiff Yvonne Welch filed a proposed class and representative lawsuit against Defendant in the Tuolumne County Superior Court, on behalf of herself and all other non-exempt California employees, alleging violations of the California Labor Code (the "Action"). As amended, the Action asserts claims against Defendant for (1) failure to pay all minimum and overtime wages (Labor Code §§ 510, and 1194 and the IWC Wage Orders); (2) failure to provide rest periods or compensation in lieu thereof (Labor Code § 226.7 and the IWC Wage Orders); (3) failure to provide meal periods or compensation in lieu thereof (Labor Code §§ 226.7, 512 and the IWC Wages Orders); (4) failure to provide accurate itemized wage statements (Labor Code § 226); (5) failure to timely pay wages during employment and at the separation of employment (Labor Code §§ 201-203); (6) violation of Business and Professions Code § 17200; and (7) civil penalties pursuant to PAGA for underlying violations of the Labor Code as set forth in the Complaint discussed above, including, but not limited, to Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558 and 1194. The lawsuit seeks to certify the following class: all persons employed by Defendant in a non-exempt position at Rush Creek Lodge in Groveland, California between December 11, 2016 and March 16, 2021 ("Class Period"). The lawsuit seeks recovery of wages, damages, interest, statutory and civil penalties, attorneys' fees and costs. Defendant denies all of the allegations in the Lawsuit and maintains that it has at all times acted in good faith to comply with the requirements of the California Labor Code

The attorneys for the parties are:

Plaintiff Welch:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
27200 Agoura Road, Suite 101
Calabasas, CA 91301
attorneys@gaineslawfirm.com
(866) 550-0855

Defendant First Light Resorts, LLC

Christina Cusimano Tillman, Esq.
McCormick Barstow LLP
7647 North Fresno Street
Fresno, CA 93720
christina.tillman@mccormickbarstow.com

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on her claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they all avoid the costs, risks, and uncertainty of a trial, and the people affected will get compensation. Plaintiff and Plaintiff's attorneys think the settlement is fair, reasonable and adequate and in the best interests of all class members. Defendant denies any wrongdoing but believes the settlement makes sense, as a business decision, to avoid the uncertainty of trial and to return its attention to its ongoing business operations.

B. Who is in the Settlement Class?

The Settlement encompasses the following class: all persons employed by Defendant in a non-exempt position at Rush Creek Lodge in Groveland, California between December 11, 2016 and March 16, 2021 (the "Settlement Class").

C. What does the Settlement provide?

1. Maximum Settlement Amount.

Defendant will pay \$600,000 (the "Maximum Settlement Amount") to settle the lawsuit, in two equal payments approximately six months apart (the first half to be paid and disbursed to Class Members in ___, 2021 and the second half to be paid and disbursed to Class Members in ___, 2021, although these dates are subject to change).

The following sums will be paid from the Maximum Settlement Amount: (1) \$15,000 to the California Labor and Workforce Development Agency (the "LWDA"); (2) the fees of Plaintiff's attorneys in an amount set by the Court not to exceed 40% of the Maximum Settlement Amount (\$240,000) and Plaintiff's attorneys' documented litigation costs in an amount set by the Court not to exceed \$10,000; (3) a service payment, set by the Court, to the Plaintiff, not to exceed \$12,000 for her service in the lawsuit; and (4) a reasonable amount set by the Court to the settlement administrator for administering the settlement, not to exceed \$10,000. The amount of the Maximum Settlement Amount remaining after these payments is the "Net Settlement Proceeds."

2. Individual Payment Amount.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below.

D. What are you giving up to get a payment or stay in the Class?

Upon the Effective Date, and subject to Defendant's full payment of the Maximum Settlement Amount and related employer-side taxes, Plaintiff and all Class Members who do not timely opt-out of the Settlement will be deemed to have fully released and discharged Defendant and any and all of its officers, owners, directors, shareholders, members, partners, principals, agents, employees, insurers, accountants, attorneys, spouses, heirs, parents, subsidiaries, affiliates, successors, and predecessors ("Released Parties") from any and all claims alleged in the Action, or which could have been alleged based on the facts set forth in the operative complaint, during all periods of time they were employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California during the Release Period (December 11, 2016 through [preliminary approval date]).

E. How is my share of the Settlement calculated?

Each participating claimant (those who do not opt out of the Settlement) shall receive an Individual Payment Amount, which is a share of the Net Settlement Proceeds (Net Settlement Proceeds are calculated by deducting attorneys' fees and costs, claims administration costs, any service payment to the Plaintiff/Class Representative, and the LWDA's share of the PAGA penalty payment from the Maximum Settlement Amount). Your share of the Net Settlement Proceeds, and the share of each Class Member, is the "Individual Payment Amount."

The Individual Payment Amounts will be calculated by dividing the Net Settlement Proceeds by the total pay periods worked by all participating Class Members during all periods of time they were employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California during the Release Period, which will yield the pay period rate. The pay period rate shall be multiplied by the number of pay periods each individual participating Class Member was employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California during the Release Period to yield their Individual Payment Amount. Each Class Member who does not opt out of the Settlement shall be paid an Individual Payment Amount. All pay period calculations herein shall be made by reference to Class Members' hire and termination dates and payroll data contained in the records kept by Defendant in the ordinary course of business during the applicable time periods.

For tax purposes, each Individual Payment Amount will be apportioned (a) 33-1/3% to wages (reported on an IRS Form W-2 and subject to applicable withholdings/taxes); (b) 33-1/3% to penalties (reported on an IRS Form 1099, if required); and (c) 33-1/3% to interest (reported on an IRS Form 1099,

if required). All Individual Payment Amounts paid to Class Members will be subject to any applicable employee-side payroll taxes, wage garnishments, liens, or other legally mandated treatment as required by law.

According to the records of Defendant, you worked [_____] pay periods while employed in a non-exempt position at Defendant's Rush Creek Lodge in Groveland, California between December 11, 2016 and [preliminary approval date]. Based on these pay periods worked, you are entitled to an Individual Payment Amount of approximately \$[_____]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2020. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, 2021, at _____ a.m., in Department 2, Judge Kevin M. Seibert presiding, of the Tuolumne County Superior Court, located at _____. The Court will determine: (i) whether the lawsuit should finally be certified as a class action for settlement purposes; (ii) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's attorneys; and (v) the amount that should be awarded to Plaintiff as a service payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE ATTORNEYS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than [45 days after mailing]. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. If you object in writing, you may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Objections must be postmarked no later than _____ [45 days after mailing].

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against Defendant and pursue your own claims in a separate suit. You can opt out of the Settlement Class by completely filling out and mailing the enclosed Request for Exclusion Form to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____ [45 days after mailing].

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed "Settlement Agreement and Release of Claims" which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the Tuolumne County Superior Court, located at _____.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Plaintiff's attorneys, Gaines & Gaines, APLC, at 866-550-0855. Please refer to the First Light Resorts Class Action Settlement.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT 2

REQUEST FOR EXCLUSION

ONLY COMPLETE THIS REQUEST FOR EXCLUSION FORM IF YOU WANT TO OPT OUT OF (NOT PARTICIPATE IN) THE SETTLEMENT of the case of *Welch, et al. v. First Light Resorts, LLC*, Tuolumne County Superior Court Case. No. CV63506. **IF YOU OPT OUT OF THE SETTLEMENT, YOU WILL NOT RECEIVE ANY PORTION OF THE SETTLEMENT AMOUNT.**

I confirm that I was employed by First Light Resorts, LLC in a non-exempt position at Rush Creek Lodge in Groveland, California between December 11, 2016 and March 16, 2021.

I do not wish to receive any payment under the terms of the proposed class action settlement or to otherwise participate in the proposed settlement.

Date: _____

Signature: _____

Print Name: _____

Residence Street Address: _____

City, State and Zip Code: _____

IN ORDER TO BE VALID, THIS REQUEST FOR EXCLUSION FORM MUST BE COMPLETED, SIGNED, MAILED BY FIRST CLASS MAIL, AND POSTMARKED ON OR BEFORE **[45 days after mailing of Notice]**. Send this signed request for exclusion form to the Settlement Administrator:

First Light Resorts Administrator
c/o ILYM Group, Inc.

