

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT: FIRST LIGHT RESORTS, LLC, a California
(AVISO AL DEMANDADO):** limited liability company, d/b/a WEST CREEK
LODGE and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF: YVONNE WELCH, on behalf of
(LO ESTÁ DEMANDANDO EL DEMANDANTE):** herself and on behalf of all
similarly situated individuals

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Tuolumne
41 West Yaney Avenue
Sonora, California 95370

CASE NUMBER:
(Número del Caso):

CV 03506

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC
27200 Agoura Road, Suite 101, Calabasas, CA 91301

Hector X. Gonzalez, Jr. 818-703-8985

DATE:
(Fecha) 12/11/2020

Clerk, by
(Secretario)

Amy Rhorer

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

BY
FAX

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor) ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: 202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Yvonne Welch		FOR COURT USE ONLY FILED DEC 11 2020 Superior Court of California County of Tuolumne By: <u>Amy Rhorer</u> Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TUOLUMNE STREET ADDRESS: 41 West Yaney Avenue MAILING ADDRESS: 41 West Yaney Avenue CITY AND ZIP CODE: Sonora, 95370 BRANCH NAME: Historic Courthouse		CASE NUMBER: <u>CN 03506</u> JUDGE: DEPT:	
CASE NAME: Welch v. First Lights Resorts, LLC, et al.		CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		Items 1-6 below must be completed (see instructions on page 2).	

1. Check **one** box below for the case type that best describes this case:

Auto Tort

- ☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- ☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- ☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

- ☐ Wrongful termination (36)
☒ Other employment (15)

Contract

- ☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

- ☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

- ☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

- ☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
 (Cal. Rules of Court, rules 3.400-3.403)

- ☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

- ☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- ☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Six (6)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/10/2020

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)

Alex P. Katofsky

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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

FILED

DEC 11 2020

Superior Court of California
County of Tuolumne

By: Amy Rhorer Clerk

Attorneys for Plaintiff Yvonne Welch on behalf of herself and on behalf of all similarly situated individuals,

**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: CN63506

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**1. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
558; IWC WAGE ORDER 5-2001)**

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512, 558, 1194 AND 1194.2; IWC WAGE
ORDER 5-2001)**

**3. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e), (h))**

**4. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

**5. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**6. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7,
510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

BY
FAX

DEMAND FOR JURY TRIAL

Plaintiff YVONNE WELCH (“Plaintiff”), on behalf of herself, all similarly situated individuals, and on behalf of the general public, as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and the Class of individuals described in detail below against FIRST LIGHT RESORTS, LLC, a California limited liability company, d/b/a WEST CREEK LODGE, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods, or compensation in lieu thereof; failing to pay all minimum wages and overtime wages; failing to issue accurately itemized wage statements; and failing to timely pay all wages due and owing upon separation of employment.

3. Plaintiff, on behalf of herself members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 1194.2, seeking compensation for all unpaid wages, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of herself and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages.

5. Plaintiff, on behalf of herself and all aggrieved employees, pursuant to Labor Code §§ 2698 *et seq.*, seeks civil penalties for Defendants’ various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and members of the Class in Tuolumne County, California.

\\

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

II.

PARTIES

A. Plaintiff

7. Plaintiff YVONNE WELCH was employed by Defendants from July 2016 through December 2019 as non-exempt employee in Tuolumne County, California.

8. During her work with Defendants, Plaintiff is:

- a. Willfully denied the payment of all minimum and overtime wages due;
- b. Willfully denied meal and rest periods, or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements; and
- d. Denied the timely payment of all wages upon separation of her employment.

B. Defendants

9. Defendant FIRST LIGHT RESORTS, LLC, is a California limited liability company doing business as WEST CREEK LODGE. Defendant FIRST LIGHT RESORTS, LLC employed Plaintiff and Class Members in Tuolumne County, California.

10. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 13. Plaintiff brings this action on behalf of herself and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons employed by Defendants in California as non-exempt
8 employees at any time since the date four years preceding the filing of
9 this Action and continuing through the present.

10 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
11 modify this class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 15. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and each proposed Class is easily ascertainable.

16 **A. Numerosity**

17 16. The potential members of the Class as defined are so numerous that joinder of all class
18 members is impracticable. While the precise number of members of the Class has not been
19 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 currently employ, and during the relevant time periods employed, over 50 persons in the State of
21 California who fall within the Class definition.

22 17. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiff alleges Defendants' employment records would provide information as to the
24 number and location of members of the Class. Joinder of members of the Class is not practicable.

25 **B. Commonality**

26 18. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 558, and IWC Wage Order 5-2001;
- b. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2 and IWC Wage Order 5-2001;
- c. Whether Defendants failed to pay all minimum and overtime wages due to Plaintiff and Class Members, in violation of Labor Code §§ 510, 558, 1194, and 1194.2;
- d. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- e. Whether Defendants failed to timely Plaintiff and pay members of the Class all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203; and
- f. Whether Plaintiff and Class Members are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

\\

\\

E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

22. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

**FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 5-2001)**

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7 and 558 and IWC Wage Order 5-2001.

25. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely unable to take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each missed rest period. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 5-2001.

26. Pursuant to Labor Code §§ 226.7 and 558 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all rest period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(LABOR CODE §§ 226.7, 510, 512, 558, 1194 AND 1194.2 AND IWC WAGE ORDER 5-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512 and IWC Wage Order 5-2001.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked over five hours in duration, and a second 30-minute meal period for every shift worked over ten hours in duration, but were not paid premium wages of one hour's pay for each missed meal period. When Plaintiff and Class Members did receive a meal period, they were typically late, cut short, or interrupted, requiring them to work during their meal periods. This violates Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2 and IWC Wage Order 5-2001.

30. Pursuant to Labor Code §§ 226.7, 510, 512, 558, 1194, and 1194.2 and IWC Wage Order 5-2001, Plaintiff seeks the payment of all unpaid wages and meal period compensation which she and Class Members are owed for four years preceding the filing of this Action, according to proof, compensatory damages for all unpaid minimum wages and overtime wages due when Plaintiff and

1 Class Members worked through their unpaid meal periods, and liquidated damages for all unpaid
2 minimum wages.

3 Wherefore, Plaintiff and the class she seeks to represent request relief as described below.

4 **VI.**

5 **THIRD CAUSE OF ACTION**

6 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

8 **EMPLOYEE WAGE STATEMENT PROVISIONS**

9 **(LABOR CODE § 226(a), (e))**

10 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set
11 forth herein.

12 32. Section 226(a) of the California Labor Code requires Defendants to provide wage
13 statements to employees. In those wage statements, Defendants must provide an accurate itemized
14 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
15 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
16 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
17 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
18 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
19 her social security number or an employee identification number other than a social security number,
20 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
21 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
22 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
23 226(a).

24 33. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
25 accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and
26 Class Members were not paid for all meal and rest period premium wages and all minimum and
27 overtime wages due. As such, the wage statements provided by Defendants failed to accurately state
28 all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of

1 Labor Code § 226(a)(2), net wages earned, in violation of Labor Code §§ 226(a)(5), and all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked, in
3 violation of Labor Code § 226(a)(9).

4 34. As a consequence of Defendants' willful conduct in failing to provide Class Members
5 with accurate itemized wage statements Plaintiff and Class Members have been injured because they
6 have not been paid all wages due and were issued wage statements which do not reflect, and fail to
7 state, all information required by Labor Code § 226(a). The missing information cannot be discerned
8 at all from the face of the wage statements themselves. As a result, Plaintiff and Class Members are
9 entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or
10 \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in
11 a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled
12 to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

13 Wherefore, Plaintiff and the class she seeks to represent request relief as described below.

14 **VII.**

15 **FOURTH CAUSE OF ACTION**

16 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

17 **FAILURE TO TIMELY PAY WAGES DUE AT**

18 **SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

19 35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set
20 forth herein.

21 36. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
22 due within 72 hours after resignation of employment or the day of termination of employment. Labor
23 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
24 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
25 or an action is commenced. The penalty cannot exceed 30 days of wages.

26 37. Defendants paid Plaintiff and members of the Class their final wages beyond the time
27 frames set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiff and
28 members of the Class were not paid all wages due and owing throughout the course of their

1 employment, including all premium wages for missed and denied rest periods, and all minimum and
2 overtime wages due, as detailed above. Consequently, at the time of their separation from employment
3 with Defendants, they were not paid all final wages due and owing for the entirety of their
4 employment.

5 38. Independently, when Plaintiff was terminated from her employment with Defendants,
6 she was not issued her final wages at the time of her termination. Rather, Plaintiff was eventually paid
7 her final wages 7 days after her termination. This violates Labor Code §§ 201-203 and is alleged on
8 behalf of all Class Members who have since left their employment with Defendants

9 39. More than 30 days have passed since Plaintiff and certain members of the Class have
10 left Defendants' employ.

11 40. As a consequence of Defendants' willful conduct in not paying wages owed timely
12 upon separation of employment, Plaintiff and members of the Class are entitled to up to 30 days'
13 wages as a penalty under Labor Code §§ 203 for Defendants' failure to timely pay legal wages
14 (including vacation wages) at separation of employment.

15 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

16 **VIII.**

17 **FIFTH CAUSE OF ACTION**

18 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

19 **UNFAIR COMPETITION PURSUANT TO**

20 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

21 41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set
22 forth herein.

23 42. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and
24 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
25 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
26 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
27 and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest
28 within the meaning of Code of Civil Procedure § 1021.5.

1 43. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
2 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
3 appropriate equitable relief.

4 44. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
5 practices.

6 45. Wage and hour laws express fundamental public policies. Properly providing
7 employees with all wages due is a fundamental public policy of this State and of the United States.
8 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
9 standards, to ensure that employees are not required or permitted to work under substandard and
10 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
11 lower their costs by failing to comply with minimum labor standards.

12 46. Defendants have violated statutes and public policies. Through the conduct alleged
13 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
14 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
15 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
16 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
17 guaranteed to all employees under law.

18 47. Defendants’ conduct, as alleged herein, constitutes unfair competition in violation of
19 §17200 *et seq.* of the Business & Professions Code.

20 48. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
21 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
22 17200 *et seq.* of the Business & Professions Code.

23 49. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
24 similarly situated have been damaged in a sum as may be proven.

25 50. Unless restrained by this Court, Defendants will continue to engage in the unlawful
26 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
27 should make such orders or judgments, including the appointment of a receiver, as may be necessary
28 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or

1 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
2 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
3 the money Defendants have unlawfully failed to pay.

4 **IX.**

5 **SIXTH CAUSE OF ACTION**

6 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
7 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
8 **LABOR CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR**
9 **CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10 51. Plaintiff incorporates paragraphs 1 through 50 of this Complaint as though fully set
11 forth herein.

12 52. As a result of the acts alleged above, including the Labor Code violations set forth
13 herein, Plaintiff seeks civil penalties pursuant to Labor Code § 2698 *et seq.*

14 53. For each such violation, Plaintiff and all other aggrieved employees are entitled to
15 penalties in an amount to be shown at the time of trial subject to the following formula:

- 16 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
17 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
18 1194; and
19 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
20 §§ 226.3 and 558.

21 54. Penalties recovered will be allocated 75% to the Labor and Workforce Development
22 Agency, and 25% to the affected employees.

23 55. On September 22, 2020, Plaintiff sent a letter, by online submission to the LWDA and
24 by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
25 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
26 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
27 calendar days of September 22, 2020. Plaintiff may therefore commence this action to seek civil
28 penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code §§ 510 and 1194 in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;
2. For liquidated damages pursuant to Labor Code § 1194.2 in the amount of all unpaid minimum wages due to Plaintiff and Class Members;
3. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members, pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 203 for Plaintiff and members of the Class who are no longer employed by Defendants;
5. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class members;
6. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and members of the Class;
7. For penalties and other relief pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all aggrieved employees;
8. An award providing for payment of costs of suit as permitted by law;
9. An award of prejudgment and post-judgment interest as permitted by law;
10. An award of attorneys' fees as permitted by law; and
11. Such other and further relief as this Court may deem just and proper.

Dated: December 10, 2020

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

Dated: December 10, 2020

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA COUNTY OF TUOLUMNE 41 W. Yaney Avenue Sonora, CA 95370 Phone: (209) 533-5555		Space below for use by Court Clerk only. FILED DEC 11 2020 Superior Court of California County of Tuolumne By: <u>Amy Rhorer</u> Clerk
Plaintiff(s): <u>Yvonne Welch, on behalf of herself and on behalf of all similarly situated individuals</u>		Case Number: <u>CN63506</u>
Defendant(s): <u>First Light Resorts, LLC et al</u>		
DELAY REDUCTION PROGRAM INFORMATION AND SETTING		

This case is in Tuolumne County's delay reduction program. Special rules apply to this case. It is the duty of each party to be familiar with the rules and the date, time, and place of the first case management conference.

This notice must be served with the Summons on all defendants and cross-defendants. Notice of any other pending management conference must be served on subsequently named defendants and cross-defendants.

The first case management conference hearing date is set on:		
Date: <u>4/13/2021</u>	Time: <u>9:30 AM</u>	Dept. No. <u>02</u>
(To be completed by clerk.)		

At least fifteen (15) calendar days (CRC Rule 3.725) before the Case Management Conference, each party must file with the court and serve on all other parties a case management conference statement. The mandatory case management statement, Judicial Council form CM-110, must be used.

NOTICE: The advance jury fee of \$150.00 per party is **not refundable**, and must be deposited on or before the date scheduled for the initial case management conference in this action. If no case management conference is scheduled, then the jury fee must be deposited no later than 365 calendar days after the filing of the initial complaint. If the party has not appeared before the initial case management conference, or has appeared more than 365 calendar days after the filing of the initial complaint, the jury fee must be deposited at least 25 calendar days before the date initially set for trial. If the action is an unlawful detainer, the jury fee must be deposited at least five days before the date set for trial.

DELAY REDUCTION PROGRAM INFORMATION AND SETTING