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Attorneys for Plaintiff Yvonne Welch
and Proposed Class Counsel

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 Judge
Laura Krieg, Dept. 2*

CLASS ACTION

**AMENDED NOTICE OF HEARING FOR
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

**Date: September 2, 2021
Time: 1:30 p.m.
Dept.: 2**

Complaint Filed: December 11, 2020

1 **PLEASE TAKE NOTICE THAT** on September 2, 2021 at 1:30 p.m., or as soon thereafter
2 as the matter may be heard, in Department 2 of the above-entitled Court, located at 41 West Yaney
3 Avenue, Sonora, California 95370, Plaintiff Yvonne Welch's Unopposed Motion for Preliminary
4 Approval of Class Action Settlement will be heard before the Honorable Judge Laura Krieg. This
5 notice is based on the Court's Minute Order issued July 27, 2021 and is intended to correct the 8:30
6 a.m. hearing time reflected on the Supplemental Declaration of Daniel F. Gaines, which Plaintiff
7 filed with the Court and served on all parties on August 23, 2021. A true and correct copy of the
8 Minute Order is attached hereto as Exhibit A.

9
10 DATED: August 25, 2021

Respectfully submitted,

11 GAINES & GAINES,
12 A Professional Law Corporation

13 By: Miriam Schimmel
14 DANIEL F. GAINES, ESQ.
15 MIRIAM L. SCHIMMEL, ESQ.
16 Attorneys for Plaintiff Yvonne Welch and Proposed
17 Class Counsel
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EXHIBIT A

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF TUOLUMNE

Yvonne Welch)
Plaintiff/Petitioner,)
v.)

First Light Resorts, LLC, a)
California limited liability company)

Case No. CV63506
Event Date: July 27, 2021
Event Type: Motion Hearing
Mtn/OSC: Other
Add'l Info: Preliminary Injunction
Judge: Kevin M Seibert
Clerk:
Reporter:

Civil Unlimited - Minutes

Appearances:

There are no appearances.

Motion Hearing - Preliminary Approval of Class Action Settlement:

Case regularly called for hearing.

No parties present.

Tentative ruling stands

Pleadings: Motion for Preliminary Approval of Class Action Settlement

Moving Party: Defendant

Motion filed: May 20, 2021

Ruling: The Motion is CONTINUED to September 2, 2021, Department 2. Counsel is required to submit at the next hearing all proof that the procedural prerequisites have been met (including timely service of the new First Amended Complaint).

This is a putative class action, seeking redress for alleged wage/hour violations in the hospitality industry. The operative pleading is the First Amended Complaint, which contains seven (7) causes of action and a single proposed class as follows: "all persons employed by Defendant First Light Resorts, LLC in a non-exempt position at Rush Creek Lodge in Groveland, California, between 12/11/16 and 03/16/21." The operative pleading was first filed on 06/09/21, which predates the pending motion by three weeks.

Before the Court this day is an initial hearing on plaintiff's application for provisional certification of a class, preliminary approval of class settlement, and approval of a PAGA settlement. The gross settlement amount ("GSA") is \$600,000.00, which is intended to cover approximately 650 non-exempt hourly employees suffering one of many wage/hour violations. This is a non-reversionary settlement (meaning nothing goes back to the defendant). The proposed deductions/allocations from the GSA are as follows:

Attorney Fees: \$240,000.00 (40%)
Litigation Costs: \$ 10,000.00
Administrator Costs: \$ 10,500.00
Service Enhancement: \$ 12,000.00
LWDA share of PAGA: \$ 15,000.00

Based on the proposed deductions/allocations, there should be an average payout per class member of \$480.00.

For the reasons which follow, the motion must be continued briefly.

Provisional Certification of the Class - Approved

After parties to a putative class action settle the dispute, they must present that settlement to the trial court for approval. If the class has not yet been certified, part of the motion will include a request for provisional certification for purposes of settlement only. See CRC 3.769. Although the provisional process is less demanding than a traditional motion for class certification, a trial court reviewing an application for preliminary approval of a settlement must still find that the normal class prerequisites have been met. See *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 625-627 (1997); in accord, *Carter v. City of Los Angeles* (2014) 224 Cal.App.4th 808, 826.

The moving party must establish by admissible evidence: (1) the existence of an ascertainable and sufficiently numerous class; (2) a well-defined community of interest; and (3) substantial benefits from certification that render proceeding as a class superior to the alternatives. These elements are typically referred to as ascertainability, numerosity, commonality, typicality, adequacy, and superiority. A class is ascertainable when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible, and that is sufficient to allow a member of the class to identify himself or herself as having a right to recover. In other words, a class is ascertainable if it is relatively easy to see who is in the class, and who has viable claims. A community of interest exists there if predominant common question of law or fact which will impact all class members, if the proposed class representative has similar individual claims to the class, and if the proposed class representative and counsel will adequately represent the class. *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980-986; *Duran v. U.S. Bank Nat'l Ass'n* (2014) 59 Cal.4th 1, 28-29; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

Here, the proposed class of "all persons employed by Defendant First Light Resorts, LLC in a non-exempt position at Rush Creek Lodge in Groveland, California, between 12/11/16 and 03/16/21" is amenable to class certification. The class is ascertainable, numerous, common and typical. There is certainly value in the class process here.

The PAGA Portion - Continued

On a proposed PAGA settlement, the trial court must review and approve the settlement, making sure it is fair to both the LWDA, as well as the employees subjected to one or more of the

alleged Labor Code violations. Courts generally look to whether the settlement is genuine, meaningful and consistent with the underlying purpose of PAGA, to wit: protecting employees, augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance. Some of the factors to consider, subject to a sliding scale, include (1) the LWDA's views, or lack thereof, on the settlement; (2) the likelihood of any discretionary reduction of PAGA penalties under §2699(e)(2); (3) the value of any nonmonetary relief (such as changes in company policies); and (4) whether the same employees entitled to PAGA penalties are already recovering monetary relief as part of a class settlement. See, e.g., *Williams v. Superior Court* (2017) 3 Cal.5th 531, 548-549; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382; *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742-744; *Julian v. Glenair, Inc.* (2017) 17 Cal.App.5th 853, 865-866; in accord, *Haralson v. U.S. Aviation Services Corp.*, 383 F.Supp.3d 959, 971-974 (N.D. Cal. 2019); *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F.Supp.3d 1074, 1075 (C.D. Cal. 2017); *O'Connor v. Uber Techs., Inc.*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).

Here, plaintiffs set aside a mere \$10,000 for the PAGA claim. This is a steep deduction for the myriad of alleged violations relating to hourly rates, overtime rates, business expenses, and meal/rest periods for those entitled. However, this would be acceptable if all class members were aggrieved employees. It appears from a review of the settlement agreement that the PAGA funds for aggrieved employees will pour over into the NSA for all class members, so the parties should just confirm that is the case (and that there will not be any PAGA sub-group).

However, the PAGA portion cannot be approved at this time because the supporting papers do not include copies of the required notices. The trial court must confirm that plaintiff satisfied all of the pre- and post-filing requirements. For example, before the lawsuit was filed, plaintiff was required to give the LWDA pre-filing notice via its online portal, within one year of the offense, "of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." The notice must contain at least some evidentiary facts (rather than mere conclusions), and must make reference to other employees (not just plaintiff). Plaintiff was also required to tender to the LWDA the required \$75 filing fee, and wait the minimum 65 calendar days for LWDA to respond. After the lawsuit is filed, plaintiff has two additional procedural requirements. First, plaintiff must give LWDA, via its online portal, a file-stamped copy of the complaint "within 10 days following commencement of" the civil action. Second, plaintiff must give LWDA, via its online portal, a copy of the proposed settlement for court approval "at the same time that it is submitted to the court." Labor Code §§ 2699, 2699.3. See *Esparza v. Safeway, Inc.* (2019) 36 Cal.App.4th 42, 60-61; *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 834-835; *Kahn v. Dunn-Edwards Corp.* (2018) 19 Cal.App.5th 804, 809.

Counsel is required to submit at the next hearing all proof that the procedural prerequisites have been met (including timely service of the new First Amended Complaint).

The Class Settlement – Approved in Part

At the preliminary approval stage, the proponent of the settlement bears the burden of showing that the settlement is within the reasonable range such that a trial court will likely be able to

approve it at a final hearing, taking into consideration these four factors: (1) have putative class members been adequately represented by experienced counsel and a vested representative; (2) was the settlement a result of a serious, informed, non-collusive, arm's length negotiation; (3) whether the relief obtained has any real value to class members when compared to what those claims might yield; and (4) are certain segments of the class entitled to preferential treatment. Because this is not the final approval hearing, the level of scrutiny at this stage is often described as something less than a "finding" of fairness and more of a "feeling" of fairness. See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1166.

Despite what may appear to be a rather amorphous standard at this juncture, it is in the best interests of all involved to have some real scrutiny. Thus, even at the preliminary hearing stage, courts should still keep the fairness elements in mind, to wit (1) the strength of plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement when compared to the potential recovery; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) any evidence of collusion, fraud or overreaching by the negotiating parties; and (8) due regard to what is otherwise a private consensual agreement. See *Jones v. Farmers Insurance Exchange* (2013) 221 Cal.App.4th 986, 998; *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 581; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

The GSA appears to be in the reasonable range.

The proposed attorney fee allocation is higher than normal, and so counsel is expected to provide detailed records for a proper lodestar cross-check at the final approval hearing. Counsel is approved to proceed as class counsel.

The proposed litigation fee allocation appears to be reasonable, but again detailed invoices and records permitting an adequate analysis akin to a CCP §1033.5 review will be required at the final hearing.

The proposed administrator fee allocation appears to be reasonable. The appointment hereof is approved.

The proposed representative enhancement is on the high side, so plaintiff will be required to support that request with a detailed declaration at the final approval hearing. She is approved to proceed as the class representative.

In conclusion, the proposed settlement could be within the range of what would be approved at a final hearing, save for the above-referenced concerns and a few more from the Settlement Agreement set forth below.

Para C.1(c). The Court expects clarification the method to be employed if a class member disagrees with the administrator's calculations. Since the initial Notice will include this calculation, there must be some mechanism whereby a class member can object and, if not resolved amicably, lodged with the Court for resolution.

Para E.12. The parties indicate that notices only need to be in English, but defendant will have to confirm that all 650 are sufficiently communicative in English to satisfy due notice.

Para E.3 and E.9. There is no "conclusive presumption" of proper notice when mail is not returned. In addition, in the event of non-deliverable notices, the administrator is expected to exhaust reasonable effort locating the individual by looking for changes of address and online "skip tracing."

Para E.7-E.8. It is permissible to set a deadline for return of opt-out requests, but should the administrator receive opt-outs that are imperfect, this Court expects to learn of those and to make a determine as to whether the employee substantially complied with the opt-out process.

Para. E.11. Since objections are permissible up to the final hearing, the imposed deadline for objections is not acceptable. Moreover, to avoid questions regarding the effectiveness of an objection, this Court prefers to see Objection Forms included in the notice packet.

Para F. Why does the defendant require six months to fund the GSA?

Para G. Assuming a valid basis for the two installment method described, what is the basis for the administrator making pro rata distributions to all interested parties at that time? This seems to double the administrator's work, and may create undue confusion amongst the class members. Since the delay is only six months, this Court prefers for the administrator to deposit the first installment into an interest-bearing account, and to make one distribution when the GSA is fully funded.

Hearing continued to September 2, 2021 in Department 2 before the Honorable Laura Krieg. All filings responsive to this Court's concerns must be on file at least 10 calendar days prior to the next hearing date.

Next Court Date:

The matter is set for the following date:

DATE/TIME	DEPT.	PURPOSE
09/02/2021 1:30 PM	Department 2	Motion Hearing. Preliminary Approval of Class Action Settlement - FURTHER

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action. My business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301.

4 _____ (For messenger) my business address is:

5 On August 25, 2021, I served the foregoing document described as **AMENDED NOTICE OF HEARING**
6 **FOR UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the
7 interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

8 **Christina C. Tillman, Esq.**
9 **Justin G. Donner, Esq.**
10 **MCCORMICK, BARSTOW, SHEPPARD, WAYTE**
11 **& CARRUTH LLP**
12 **7647 North Fresno Street**
13 **Fresno, California 93720**

14 On the above date:

15 _____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
16 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
17 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
18 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
19 meter date is more that one day after date of deposit for mailing in affidavit.

20 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
21 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
22 carrier or driver authorized by the express carrier to receive documents.

23 X (BY ELECTRONIC SERVICE) The above-stated document was served by electronic transmission via email
24 on the counsel of record listed above.

25 X (UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the
26 Labor & Workforce Development Agency via online process at the PAGA Filing website (www.dir.ca.gov) in
27 accordance with the procedure imposed by the LWDA.

28 I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 25, 2021, at Calabasas, California.

22 
23 _____
24 JEREMY REYES