1. SLATER v. RALEY'S SOUTH Y CENTER, SC20210019

Case Management Conference

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, AUGUST 19, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. HAMILTON, ET AL. v. THE VAIL CORP., ET AL., SC20210148

(1) Motion for Final Approval of Class Action Settlement

(2) Motion for Attorney Fees and Costs and Class Representative Service Awards

This is a wage and hour class action. Plaintiffs, individually and on behalf of all similarly situated non-exempt employees ("Class Members") who worked for defendants The Vail Corporation, dba Vail Resorts Management Company, Heavenly Valley, LP, and all parent corporations, subsidiaries, and other affiliates ("Vail") at Vail's resort locations or mountain facilities in the United States, move for final approval of a Class Settlement.[1] Plaintiffs also move for an award of attorney fees, costs, and Class Representative service awards. Defendants do not oppose plaintiffs' motions. About seven objections to the Settlement were made by Class Members, including in writing and orally at the initial Final Approval Hearing on June 17, 2022. Having reviewed and considered the parties' papers and documentary evidence, and the objections from Class Members, the court grants plaintiffs' motions for final approval of the Class Settlement, and for attorney fees, costs, and Class Representative service awards.

A. BACKGROUND

The First Amended Complaint ("FAC"), filed February 1, 2022, includes 33 causes of action ("C/A"). The 1st through 3rd C/A arise under the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; the 4th through 16th C/A arise under California wage and hour law, as well as the Private Attorneys General Act ("PAGA"), Cal. Lab. Code, § 2698, et seq.; the 17th through 31st C/A arise under the wage and hour laws of the states of Colorado, Minnesota, Wisconsin, Washington, New York, Vermont, Michigan, Utah, Ohio, Indiana, Missouri, New Hampshire, Pennsylvania, Nevada, and Wyoming

[1] In addition to this action (*Hamilton II*), the Settlement resolves all claims in four federal actions: (1) *Gibson*, *et al. v. The Vail Corp.* (E.D. Cal.), Case No. 21-CV-1260 (*Gibson*); (2) *Hamilton v. Heavenly Valley*, *LP* (E.D. Cal.), Case No. 21-CV-1608 (*Hamilton I*); (3) *Heggen v. Heavenly Valley*, *LP* (E.D. Cal.), Case No. 21-CV-107 (*Heggen*); and (4) *Roberds v. The Vail Corp.*, *et al.* (E.D. Cal.), Case No. 21-CV-2251 (*Roberds*).

("Class States"); and the 32nd and 33rd C/A are for, respectively, breach of contract and unjust enrichment, which are brought on behalf of a nationwide Class given the high degree of legal similarity of those C/A across the 16 Class States.

Broadly, the claims of the FAC seek relief under multiple factual theories as follows: off-the-clock and overtime hours; meal and rest breaks; unreimbursed expenses; failure to provide accurate wage statements; failure to keep requisite payroll records; failure to timely pay wages; failure to pay earned wages upon discharge; failure to pay designated wages; solicitation of employees by misrepresentation; unlawful, or unfair, or deceptive business practices; violation of PAGA; breach of contract; and unjust enrichment.

Class Counsel state that counsel for the *Gibson* plaintiffs first began investigating the claims in this case in January 2019. (Mot. for Final Approval, Decl. of Jennifer Liu, ¶¶ 13–14.) The initial investigation in *Gibson* focused on expense reimbursement claims on behalf of non-exempt employees whose primary job duties required them to ski and/or snowboard. (*Id.*, ¶ 14.) *Gibson* Counsel's investigation included interviewing potential class members; reviewing publicly available documents, including from Vail's websites, employee handbooks, and SEC filings; and conducting legal research into potential claims and defenses, and assessing potential damages. (*Ibid.*)

In November 2019, *Gibson* Counsel filed a PAGA letter on behalf of plaintiff Gibson, informing the California Labor and Workforce Development Agency ("LWDA") and Vail of Gibson's intent to seek PAGA penalties for failure to reimburse business expenses. (*Id.*, ¶ 15.) In December 2019, *Gibson* Counsel informed Vail of Gibson's intent to file a class action lawsuit for failure to reimburse business expenses in violation of California Labor Code § 2802. (*Ibid.*) *Gibson* Counsel and Vail agreed to explore settlement discussions prior to litigation, which included telephonic discussions to exchange informal discovery and factual and legal arguments before agreeing to participate in private mediation. (*Ibid.*)

In the meantime, *Gibson* Counsel continued to investigate the claims. Based on that investigation, counsel determined that plaintiffs had potential additional claims for, inter

alia, unpaid wages for off-the-clock work, missed meal and rest breaks, and that these claims extended beyond California. (*Id.*, ¶ 16.) *Gibson* Counsel informed Vail about the broader nature of their claims. (*Ibid.*) The parties continued with informal discovery, including the exchange of personnel files, employee handbooks, job descriptions, corporate policies, and sufficient class data for *Gibson* Counsel to prepare damages calculations. (*Ibid.*)

In October 2020, *Gibson* Counsel and Vail participated in a full-day mediation session with Steve Pearl, who Class Counsel states is a well-respected and experienced wage and hour class action mediator. (*Ibid.*) No settlement was reached, but the parties agreed to continue settlement discussions. (*Id.*, ¶ 17.)

In January 2021, *Gibson* Counsel filed an amended PAGA notice, adding claims for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal and rest breaks, wage statement penalties, failure to provide accurate wage statements, and waiting time penalties. (*Id.*, ¶ 19.)

In May 2020, counsel for plaintiff Heggen filed a PAGA letter with the LWDA, notifying the LWDA and Vail of Heggen's intent to seek PAGA penalties for failure to pay overtime wages, failure to provide meal and rest breaks, failure to provide accurate wage statements, failure to pay earned wages upon discharge, and failure to maintain accurate payroll records. (*Id.*, ¶ 17.) In October 2020, *Heggen* Counsel filed a wage and hour action against Heavenly Valley, LP, in the California Superior Court for the County of El Dorado. (Case No. SC20200150.) Vail removed the action to federal court in January 2021. (Mot., Liu Decl., ¶ 17.)

In March 2021, *Gibson* and *Heggen* Counsel agreed to jointly prosecute their cases. (*Id.*, ¶ 20.) In April 2021, a class and collective action complaint against Vail was filed in the California Superior Court for the County of Placer (Case No. S-CV-0046587). (Mot., Liu Decl., ¶ 20.) Vail removed the action to federal court in July 2021. (*Ibid.*)

In April 2021, the parties in *Gibson* and *Heggen* agreed to participate in a second mediation. (*Id.*, ¶ 21.) In advance of the mediation, the parties exchanged further documentary evidence, including Vail's production of comprehensive class data to *Gibson* and *Heggen* Counsel. (*Ibid.*) *Gibson* and *Heggen* Counsel retained an expert to analyze the class data and prepare damages calculations. (*Ibid.*)

On June 28, 2021, the parties in *Gibson* and *Heggen* participated in a second, full-day mediation session with a new mediator, Michael Russell, Esq., who Class Counsel states is an experienced mediator with significant experience in wage and hour class and collective actions, including mediating nationwide FLSA cases. (*Id.*, ¶ 22.) The parties reached an agreement on the material terms of the Settlement. (*Ibid.*)

In June 2020, counsel for plaintiff Hamilton filed a PAGA letter with the LWDA, notifying the LWDA and Vail of Hamilton's intent to seek PAGA penalties for failure to provide meal and rest breaks, failure to reimburse business expenses, failure to provide accurate wage statements, and waiting time penalties. (*Id.*, ¶ 23.) In July 2020, *Hamilton* Counsel filed a class action complaint in the California Superior Court for the County of El Dorado. (*Hamilton I*, Case No. SC20210125.) Vail removed *Hamilton I* to federal court in September 2021. (Mot., Liu Decl., ¶ 23.)

In August 2021, plaintiff Hamilton filed a separate PAGA representative action complaint in the California Superior Court for the County of El Dorado. (*Hamilton II*, Case No. SC20210148.) In September 2021, in light of the Settlement reached in *Gibson* and *Heggen*, Hamilton agreed to participate in the Settlement and consolidate his cases with the other two actions. (Mot., Liu Decl., ¶ 24.)

In September 2021, counsel for plaintiff Roberds filed a PAGA letter with the LWDA, notifying the LWDA and Vail of Roberds's intent to seek PAGA penalties for failure to provide meal and rest breaks, failure to reimburse business expenses, failure to provide accurate wage statements, and waiting time penalties. (*Id.*, ¶ 25.) Also in September 2021, *Roberds* Counsel filed a class action complaint in the California Superior Court for the

County of El Dorado, which asserts the same claims included in Roberds's LWDA letter, as well as UCL and class claims. (*Roberds*, Case No. SC20210125.) Vail removed *Roberds* to federal court in December 2021. (Mot., Liu Decl., ¶ 25.) The federal court for the Eastern District of California has related *Gibson*, *Heggen*, *Hamilton I*, and *Roberds*. (*Ibid.*)

On December 28, 2021, Roberds agreed to participate in the Settlement and to consolidate his case with plaintiffs Gibson, Heggen, and Hamilton. (*Ibid.*)

The court entered its order preliminarily approving the Class Settlement on February 1, 2022. Plaintiffs filed the FAC that same day. The Final Approval Hearing was initially held on June 17, 2022, so that Class Members could appear (in person and remotely) and present oral objections to the Settlement. The Final Approval Hearing was then continued to August 19, 2022, for further proceedings.

B. OVERVIEW OF THE SETTLEMENT

1. Settlement Class

The Settlement Class is defined as follows: "The term '**Class Members**' shall include all non-exempt employees who, at any time during the '**Covered Period**' worked for and were employed by Vail in the United States and worked primarily at one of its resort locations or mountain facilities. Specifically excluded from the definition of '**Class Members**' are employees who worked primarily at corporate or non-resort distribution locations ('**Non-Resort Employees**'). For purposes of clarity in the administration of the Settlement, **Non-Resort Employees** will be defined as those who are identified in Vail's records as having been assigned to one or more of the following location description codes: the CO-Aurora-Distribution, CO-Broomfield Corporate, and CO-Broomfield." (Mot., Liu Decl., Ex. A, § I(C) [bolding in original].)

The Covered Period varies, depending upon the state in which a Class Member was employed. (*Ibid.*)

As of August 9, 2022, the Settlement Administrator had received and processed 9,435 Consent to Join Forms that were postmarked or received before the extended Response Deadline of May 20, 2022. (Mot., Liu Supp. Decl. [filed Aug. 12, 2022], Ex. A (Rovertoni Supp. Decl.), ¶ 5.) The Settlement Administrator received 149 untimely Consent to Join Forms. (*Ibid.*) The parties agreed to accept all Consent to Join Forms that were received no later than August 9, 2022. (*Ibid.*) In summary, there are currently a total of 9,584 Class Members who have affirmatively consented to join the Settlement. (*Ibid.*) Qualified Class Members who did not submit a consent form will still have the opportunity to consent to join the Settlement by cashing the Settlement checks that will be mailed after the Effective Date of the Settlement. (*Ibid.*)

As of August 9, 2022, the Settlement Administrator had received and processed 1,559 Opt-Out Forms that were postmarked or received before the extended Response Deadline of May 20, 2022. (*Id.*, ¶ 6.) The Settlement Administrator received 44 untimely Opt-Out Forms. (*Ibid.*) The parties agreed to accept all Opt-Out Forms that were received no later than August 9, 2022. (*Ibid.*) In summary, there are currently a total of 1,603 Class Members who opted out of joining the Settlement, which is an approximate opt-out rate of 1.55%. (*Ibid.*)

As of August 9, 2022, there are 101,780 Qualified Class Members who have not requested exclusion. (*Ibid.*)

2. Settlement Terms

Vail will pay a total sum of $13,100,000 (“Gross Fund”) in full settlement of all claims against Vail. (Mot., Liu Decl., Ex. A.) The Gross Fund covers Settlement payments to the Class Members, service awards to the Class Representatives, attorney fees and costs, the Settlement Administrator’s fees and costs, and all amounts to be paid to the LWDA. (*Id.*, Ex. A, § III(B).) The Gross Fund does not include Vail’s share of employer payroll taxes, which shall be paid separately by Vail. (*Ibid.*)

Also separate from the Gross Fund, the parties agreed to settle plaintiff Gibson's claims for sexual harassment, gender discrimination, and retaliation claims for $50,000. (*Id*., § III(F).) Plaintiff Gibson is not seeking a service award. (*Ibid.*)

After deductions for (1) the court-approved attorney fees and costs to Class Counsel; (2) the court-approved fees and costs of the Settlement Administrator; (3) the court-approved Enhancement Payments to the named plaintiffs (except plaintiff Gibson); and (4) the PAGA payment, the resulting "Net Fund" will be distributed to all Qualified Class Members by way of their "Individual Settlement Payment." (*Id.*, § III(J)(1).)

The Individual Settlement Payments will be calculated using an allocation pro-rata formula, which is based on the number of recorded hours worked, the time period in which the hours were worked, the state in which the Class Member worked, and whether the Class Member worked in a Snow Position (e.g., ski instructors, etc.) or Non-Snow Position (e.g., base area operations, etc.). (*Id*., §§ I(C), III(J)(2).) The parties will allocate points based on hours worked rather than workweeks because of the significant variation in the number of hours worked per workweek by Class Members. (Mot., Liu Decl., ¶ 36 [allocation formula chart].) The allocation formula also provides fewer points for certain workweeks due to which claims could be brought for those weeks. (*Id.*, ¶ 38.)

The allocation formula provides twice as many points to California and Colorado Class Members. (*Id.*, ¶¶ 36 [allocation formula chart], 39.) First, because Class Counsel assert that the state laws of both states provide greater statutory protections for workers, and higher damages and penalties, than the other Class States. Second, Vail's resorts in Colorado and California are generally much larger than in the other Class States, and therefore plaintiffs alleged that Class Members in those states engaged in more uncompensated travel time than in states with smaller resorts. (*Id*., ¶ 39 & Ex. E.)

The formula also provides twice as many points to Class Members in Snow Positions that in Non-Snow Positions, as plaintiffs alleged that Class Members in Snow Positions spent significantly more time traveling up and down their respective mountain, were

subject to donning and doffing on premises, and purchased equipment that should have been reimbursed. (*Id.*, ¶¶ 35, 40.)

Additionally, the Settlement Agreement provides that in a dispute over a Class Member's recorded hours, the parties will meet and confer to resolve the dispute. (*Id.*, Liu Decl., Ex. A, § III(A)(4).) If the parties cannot resolve the dispute, the Settlement Administrator is vested with authority to decide the dispute. (*Ibid.*) As of June 3, 2022, the Settlement Administrator had not received any disputes from Class Members about their recorded hours. (Mot., Liu Supp. Decl. [filed June 10, 2022], Ex. A (Rovertoni Supp. Decl.), ¶ 7.)

The Settlement Administrator will issue Individual Settlement Payments 14 days after the Settlement Effective Date. (*Id.*, Liu Decl., Ex. A, § III(J)(3).) Checks will remain negotiable for 180 days. (*Ibid.*)

Class Counsel requests one-third of the Gross Fund ($4,366,666.67) in attorney fees and $21,215.39 in costs, and the named plaintiffs (i.e., Hamilton, Heggen, Roberds, Saiz-Hawes, Berrier, Allen) request incentive awards of $10,000 each. (Mot. for Attorneys' Fees & Costs & Class Representative Service Awards, Liu Decl., ¶¶ 30, 33, 45, 50.)

The Settlement allocates $500,00 to the PAGA claims, which represents 3.9 percent of the Gross Fund. (Mot. for Final Approval, Liu Decl., ¶ 47 & Ex. A, § III(J)(6).) Of that amount, $375,000 (75%) will be paid to the LWDA. (*Id.*, Ex. A, § III(J)(6).) As of May 25, 2022, the LWDA had not responded to either the initial LWDA Notices or the Settlement Agreement. (*Id.*, Liu Decl., ¶ 47.)

The *cy pres* beneficiaries are Legal Services of Northern California ("LSNC") and Colorado Legal Services ("CLS"). LSNC is a non-profit public interest law organization that provides free legal services (including in employment law) to low income and vulnerable individuals in 23 northern California counties. (Mot., Liu Decl., Ex. F (Decl. of Gary Smith), ¶¶ 4–8.) CLS is a non-profit organization that provides free legal services and representation in civil matters (including in employment law) to low income individuals

throughout Colorado. (Mot., Liu Decl., Ex. G (Decl. of Jonathan Asher), ¶¶ 4–8.) Class Counsel do not have any economic interest in or board affiliation with either organization. (Mot., Declarations of Jennifer Liu, ¶ 45; Robert Ottinger, ¶ 17; Elliot J. Siegel, ¶ 16; James Hawkins, ¶ 8; Larry W. Lee, ¶ 9; Kelsey Webber, ¶ 11; Justin Toobi, ¶ 8.)

C. Legal Standards for Final Approval of Class Settlement

To protect the interests of absent class members, class action settlements must be reviewed and approved by the court. California follows a two-step procedure for court approval: (1) the court reviews the terms of the settlement and form of settlement notice to the class and provides or denies preliminary approval; and later, (2) the court considers objections by class members and grants or denies final approval. (Cal. Rules of Ct., rule 3.769.)

" 'The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.' [Citations.] 'The courts are supposed to be the guardians of the class.' [Citation.]" (*Kullar v. Foot Locker Retail*, *Inc*. (2008) 168 Cal.App.4th 116, 129.) As such, "[t]he court must determine the settlement is fair, adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) " 'To make this determination, the factual record before the ... court must be sufficiently developed.' [Citation.]" (*Kullar*, *supra*, 168 Cal.App.4th 116, 130.)

"The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as [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, [5] the extent of discovery completed and the stage of the proceedings, [6] the experience and views of counsel, [7] the presence of a governmental participant, and [8] the reaction of the class members to the proposed settlement." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801 [numbers added].)

"The list of factors is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.' [Citation.] 'Ultimately, the [trial] court's determination is nothing more than "an amalgam of delicate balancing, gross approximations and rough justice." [Citation.]' [Citation.]" (*Ibid.*)

"[T]he court in *Dunk* asserted that 'a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.' [Citation.]" (*Kullar*, *supra*, 168 Cal.App.4th at p. 128.) " 'This initial presumption must then withstand the test of the plaintiffs' likelihood of success.' [Citation.] 'The proposed settlement cannot be judged without reference to the strength of plaintiffs' claims. "The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." ' [Citations.] The court 'must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case,' but nonetheless it 'must eschew any rubber stamp approval in favor of an independent evaluation.' [Citation.]" (*Id*. at p. 130.)

Because this matter also proposes to settle claims under California's PAGA, the court must further consider the criteria that apply under that statute. (See Cal. Lab. Code, § 2699(l)(2).) There is a lack of guidance in the statute and case law concerning the basis upon which a settlement may be approved. Although not binding authority, in *O'Connor v. Uber Technologies*, *Inc*. (N.D. Cal. 2016) 201 F.Supp.3d 1110, the court denied approval of class action settlements that included PAGA claims in part because the plaintiffs' claims added up to as much as $1 billion in PAGA penalties but the parties settled those claims

for $1 million, or 0.1% of their alleged maximum value. As the court stated, "where plaintiffs bring a PAGA representative claim, they take on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment. [Citation.] Such a plaintiff also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general, and 75% of the penalties go to the LWDA 'for enforcement of labor laws … and for education of employers and employees about their rights and responsibilities under this code.' " (*Id*. at p. 1134.)

In *O'Connor*, the LWDA itself filed a brief stating that "[i]t is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the PAGA." (*Id*. at p. 1133.)

D. ANALYSIS OF THE SETTLEMENT AGREEMENT

1. Presumption of Fairness

The court finds there is a presumption of fairness to the Settlement.

First, the Settlement was reached through arm's length negotiations. In October 2020, the parties in *Gibson* attended a full-day mediation with Steve Pearl, who is a well-respected and experienced wage and hour class action mediator. No settlement was reached, but the parties agreed to continue settlement discussions. (Mot., Liu Decl., ¶ 16.)

In June 2021, the parties in *Gibson* and *Heggen* participated in a second, full-day mediation session with a new mediator, Michael Russell, Esq., who is an experienced mediator with significant experience in wage and hour class and collective actions, including mediating nationwide FLSA cases. The parties reached an agreement on the material terms of the Settlement. The successful mediation included the participation of seven law firms and over a dozen lawyers. Class Counsel represents to the court that the negotiation was hard-fought on all sides and was, at times, contentious. (*Id.*, ¶¶ 22, 68.)

After the basic terms of the Settlement were reached, plaintiffs Hamilton and Roberds were sufficiently satisfied with the terms that they agreed to join the Settlement and consolidate their cases with the Gibson and Heggen plaintiffs. (*Id.*, ¶¶ 24, 25, 69.)

The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (*Kullar*, *supra*, 168 Cal.App.4th at p. 129; see also *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 504.)

Second, sufficient investigation and discovery took place to allow counsel and the court to act intelligently. Class Counsel conducted extensive informal discovery and investigation over a three-year period. Counsel interviewed numerous potential Class Members, reviewed publicly available documents concerning Vail's operations, obtained Vail's corporate policies, SEC filings, and employee handbooks and job descriptions. Vail produced over 3,000 pages of documentary evidence to plaintiffs. Further, Vail produced sufficient class data for Class Counsel to calculate Vail's exposure, including the number of employees in relevant job titles, total number of hours and shifts worked, and average hourly wage rates for the nationwide Class, totaling tens of thousands of employees over the entire Covered Period. (Mot., Liu Decl., ¶¶ 13–16, 21, 66, 67.)

Third, Class Counsel is experienced in similar litigation. Having reviewed Class Counsel's declarations, it is clear that counsel are well educated and highly experienced in class action litigation, including wage and hour class actions. (Mot., Declarations of Liu, ¶¶ 4–6; Ottinger, ¶¶ 4–11; Siegel, ¶¶ 5–15; Hawkins, ¶¶ 4–7; Lee, ¶¶ 4–7; Webber, ¶¶ 4–9; Toobi, ¶¶ 5–7.)

And fourth, the percentage of the Class that objected or opted out is very small. Class Counsel declare that the objection rate is about 0.005% and the opt-out rate is 1.55%. (Mot., Liu Supp. Decl. [filed June 10, 2022], ¶ 6; Liu Supp. Decl. [filed Aug. 12, 2022], Ex. A (Rovertoni Supp. Decl.), ¶ 6.)

Based on the foregoing, the court finds that the Settlement is entitled to a presumption of fairness.

2. *Kullar* Factors

To reiterate, the *Kullar* Factors include: (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, (5) the extent of discovery completed and the stage of the proceedings, (6) the experience and views of counsel, (7) the presence of a governmental participant, and (8) the reaction of the class members to the proposed settlement. (*Kullar*, *supra*, 168 Cal.App.4th at p. 128.)

a. Strength of Plaintiffs' Case

As part of the Settlement, Vail denies all the claims and contentions by plaintiffs. (Mot., Liu Decl., Ex. A, p. 2.) Although plaintiffs believe they have strong claims, they recognize the numerous risks involved in continuing litigation, including the risk of certification being denied, procedural attacks relating to standing and statutes of limitation, losing on the merits of their claims, and proving damages.

There is a real risk of the Class and/or FLSA Collective certification being denied or decertified, or the Class would be much narrower in scope (e.g., by location, job categories, or timeframe). (Mot., Liu Decl., ¶¶ 49, 54.) Vail had policies expressly requiring compliance with federal and state wage and hour laws, and there is minimal evidence of company policies that were uniformly applied to create class-wide liability. (*Id.*, ¶ 50.) Vail would also likely move to decertify on the basis of individualized differences in Class Members' job categories, job duties, and locations. (*Id.*, ¶ 51.) The issue regarding individualized differences and obtaining class/collective certification is evident in *Quint*, the Colorado federal action (discussed below) which still has not obtained class certification.

Plaintiffs also faced the risk of losing on the merits of their claims. Regarding off-the-clock claims, Vail did not technically require Class Members to use its shuttles, gondolas,

or chair lifts, and riding those conveyances were not always necessary to reach an employee's starting location. (*Id.*, ¶ 55.) Class Members were free to ride those conveyances at a time of their own choosing and could engage in personal activities before starting their shifts. (*Ibid.*) Plaintiffs faced even greater risk on their travel time claims under the FLSA, given that the federal Portal-to-Portal Act expressly excludes travel time from compensability. (See 29 U.S.C. § 254(a).)

Regarding the merits of plaintiffs' donning and doffing claims, Vail denies that it requires employees to don or doff at the workplace. The Class also faced the risk of losing on the merits of their meal and rest break claims, given evidence that some Class Members voluntarily chose to work through their meal and rest breaks, and that many Class Members received compensation for missed meal and rest breaks as required by law. (Mot., Liu Decl., ¶ 56.) Likewise, on the expense reimbursement claim, Vail provided compensation to some of its employees for their ski/snowboard equipment, and it also provides many employees access to a complimentary equipment "loaner" program and/or employee equipment discounts. Plus, most of Vail's employees ski/snowboard recreationally and already own the necessary equipment. (*Id.*, ¶ 57.)

Further, plaintiffs would also face the challenge of proving damages, given that Class Members generally do not have independent records of hours worked, and therefore quantifying damages on a class-wide or individual basis would be difficult. (*Id.*, ¶ 58.)

b. Risk, Expense, Complexity, and Likely Duration of Further Litigation

Given the complex nature of the class claims and the size of the class, the case would likely be exceedingly expensive and lengthy to try. Further, procedural hurdles (e.g., motion practice and appeals) would likely prolong the litigation for many years as well as any recovery by the Class Members.

c. Risk of Maintaining Class Action Status Through Trial

Even though the Class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply Intern.*, *Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has

recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].) Vail stipulated to class certification for purposes of settlement. But, if litigation in this case moved forward, and as already discussed, Vail could (and likely would) move to deny class certification.

Indeed, the difficulty of achieving class certification for a large nationwide class with diverse job duties and claims is exemplified by a similar action filed in the federal court for the District of Colorado, *Quint*, *et al. v. Vail Resorts*, *Inc.*, Case No. 20-CV03569-DDD-GPG. The *Quint* action was filed in federal court on December 3, 2020, over two and one-half years ago. To date, a class has not been certified in the Colorado action.

d. Amount Offered in Settlement

As indicated above, the maximum settlement amount is $13.1 million. Class Counsel calculated the range of potential damages based on documents and class data produced by Vail, as well as Class Counsel's own investigation over almost three years. (Mot., Liu Decl., ¶ 60.) Class Counsel explained that there is no reasonably practicable way to calculate precise damages for each Class Member in large wage and hour cases such as this one. (*Ibid.*) Rather, counsel can only make educated assumptions about the number of violations and calculate a range of potential damages. (*Ibid.*)

Class Counsel calculated that the maximum *theoretical* damages (assuming a 100% opt-in rate, and everything went perfectly for plaintiffs and they prevailed on every claim and could prove all their damages) for the four-year liability period in California and the three-year liability period covered by the FLSA outside of California *could* be as high as $108.1 million. (*Id.*, ¶ 61.) The $13.1 million Settlement represents approximately 12.1% of the Class's maximum *theoretical* damages. (*Ibid.*) Class Counsel cited numerous courts that have approved wage and hour settlements that provide recoveries of a similar percentage of the maximum potential recovery. (Mot., p. 29, fn. 24.)

The portion of the Settlement amount allocated to PAGA claims (3.9% of the Gross Fund) is also within the range of possible approval. (Mot., Liu Decl., ¶ 65.)

e. Extent of Discovery and Stage of the Proceedings

As discussed above, at the time of settlement, the parties had conducted extensive informal discovery.

f. Experience and Views of Counsel

The Settlement was negotiated and endorsed by multiple Class Counsel law firms who, as indicated above, are highly educated and experienced in class action litigation, including wage and hour cases. Class Counsel believe that the settlement is fair, reasonable, and adequate for each Qualified Class Member. (Mot., Liu Decl., ¶ 69.)

g. Presence of a Governmental Participant

On January 3, 2021, a copy of the Settlement Agreement was filed with the LWDA. (See Cal. Lab. Code, § 2699(*l*).) The LWDA did not object or otherwise contact Class Counsel with concerns about the fairness, adequacy, or reasonableness of the Settlement. (Mot., Liu Decl., ¶ 70.)

h. Reaction of the Class Members to the Settlement

The court finds that, overall, the Class Members support the Settlement. The Settlement Administrator initially identified 103,383 potential Class Members. (Mot., Liu Decl., Ex. A (Rovertoni Decl.), ¶ 5.) Through the notice process, the Notice of Class and Collective Action Settlement was successfully delivered to about 80% of the potential Class Members, and about 20% of the Notices were undeliverable. (*Id.*, ¶¶ 7, 8.) As of August 9, 2022, there are 101,780 Qualified Class Members.

As of August 9, 2022, there are a total of 1,603 Class Members who opted out of the Settlement, which is an approximate opt-out rate of 1.55%. (Mot., Liu Supp. Decl. [filed Aug. 12, 2022], Ex. A. (Rovertoni Supp. Decl.), ¶ 6.) Only 0.005% of the Class submitted objections to the Settlement.

Upon due consideration of the factors set forth above, the court finds that the Settlement is “fair, adequate, and reasonable,” and grants plaintiffs’ motion for final approval of the Class Settlement.

E. ATTORNEY FEES AND COSTS; CLASS REPRESENTATIVE SERVICE AWARDS

1. Attorney Fees

Class Counsel requests attorney fees in the amount of one-third ($4,366,666.67) of the Gross Settlement Amount. (Mot. for Attorneys’ Fees & Costs & Class Representative Awards, Liu Decl., ¶¶ 30, 33.)

In determining the appropriate amount of a fee award, courts may use the lodestar method, applying a multiplier where appropriate. (*PLCM Group*, *Inc. v. Drexler* (2000) 22 Cal.4th 1084,1095–1096.) A percentage calculation is permitted in common fund cases. (*Laffitte v. Robert Half Int’l*, *Inc*. (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, courts have an independent responsibility to review an attorney fee provision and award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

As indicated above, the fees sought here are pursuant to the percentage method. (Mot., Liu Decl., ¶ 30.) The attorney fee request is one-third of the $13.1 million Gross Settlement Amount, which is average. “ ‘ “Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” ’ [Citations.] A fee award of 25 percent ‘ “[i]s the ‘benchmark’ award that should be given in common fund cases.” ’ [Citations.]” (*Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13.) Thus, the requested fee award in this case exceeds the 25% benchmark, but is within what has been deemed a reasonable range. (See *ibid.*)

Class Counsel also provided the court with a lodestar calculation for comparison. The total lodestar as of the filing date of the motion is $1,493,084.50. (Mot., Liu Decl.,

¶ 33.) The amount sought in fees, one-third of the Gross Fund, is the equivalent of the lodestar total plus a positive multiplier of about 2.9. (*Ibid.*)

The court finds that litigating this action required significant time, investigation, and research by Class Counsel. Additionally, Class Counsel helped secure a favorable outcome because the Settlement provides a significant monetary award. Class Counsel litigated this case on a contingency basis. Additionally, there was a risk that a class would not be certified, plaintiffs would not prevail on the merits, or a potential jury award would be limited based on the difficulties associated with proving the alleged violations. Moreover, Class Counsel's work on this case will not be over once the Settlement is approved. (Mot., Liu Decl., ¶ 41.) Class Counsel anticipates spending substantial time on responding to Class Member questions, communicating with the Settlement Administrator, and communicating with Vail's counsel regarding any settlement issues that arise. Also, the Colorado plaintiffs filed an appeal of the court's order denying their motion to intervene, to which Class Counsel will need to respond, as well as to any other appeals that might be filed.

Under the totality of the circumstances of this action, the court finds that plaintiffs' requested attorney fee award is reasonable. Further, the Notice expressly advised Class Members of the fee request. Only 0.005% of the Class objected in any manner to the Settlement. Accordingly, the court awards attorney fees in the amount of one-third ($4,366,666.67) of the Gross Fund.

2. Costs

Class Counsel seek reimbursement of $21,215.39 in out-of-pocket costs. (Mot., Liu Decl., ¶ 45.) This is significantly less than the $50,000 cap provided in the Settlement Agreement. (*Id.*, Liu Decl., ¶ 48.) The costs to date include court and process server fees, postage and courier fees, mediation fees, photocopies, and electronic research.

The costs appear to be reasonable and necessary to the litigation, are reasonable in amount, and were not objected to by the Class. Costs of $21,215.39 are approved.

3. Incentive Awards to Class Representatives

An incentive fee award to a named class representative must be supported by evidence that quantifies time and effort expended by the individual and a reasoned explanation of financial or other risks undertaken by the class representative. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806–807; *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394–1395 ["Criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation."].)

Here, plaintiffs seek Class Representative Service Awards of $10,000 each to named plaintiffs Christopher Hamilton, Zachariah Saiz-Hawes, William Berrier, Matthew Allen, Adam Heggen, and Paul Greg Roberds. (Mot., Liu Decl., ¶ 50.)

Christopher Hamilton was employed by Vail in Guest Services and Lift Operations from approximately November 2019 to February 2021. (Mot., Liu Supp. Decl. [filed June 10, 2022], Ex. B (Hamilton Decl.), ¶ 2.) He worked at Heavenly Valley ski resort in South Lake Tahoe, California, from approximately November 2020 to February 2021. (*Ibid*.) He initially contacted the Webber Law Group to discuss a potential lawsuit in the summer of 2020. (*Id*., ¶ 3.) Hamilton estimates he has devoted approximately 100 hours to his duties as Class Representative in this action. (*Id*., ¶ 6.)

Zachariah Saiz-Hawes was employed by Vail as a snowboard instructor at Heavenly from approximately December 2017 to December 2018. (Mot., Liu Decl., Ex. C (Saiz-Hawes Decl.), ¶ 2.) He initially contacted Jennifer Liu and Logan Talbot of The Liu Law Firm, P.C., to discuss a potential lawsuit in October 2020. (*Id.*, ¶ 3.) Saiz-Hawes estimates he has devoted 140–150 hours working on this case. (*Id.*, ¶ 6.)

William Berrier was employed by Vail as a ski instructor and summer lift operator at Northstar ski resort from approximately November 2016 to September 2019. (Mot., Liu Decl., Ex. D (Berrier Decl.), ¶ 2.) He first spoke with Jennifer Liu of The Liu Law Firm to discuss a potential lawsuit in September 2021. (*Id.*, ¶ 3.) Berrier estimates he has devoted approximately 15–20 hours working on this case. (*Id.*, ¶ 6.)

Matthew Allen was employed by Vail as a snowboard instructor from approximately November 2016 to April 2019. (Mot., Liu Decl., Ex. E (Allen Decl.), ¶ 2.) He first spoke with The Ottinger Firm, P.C., to discuss a potential lawsuit in 2019. (*Id.*, ¶ 3.) Allen estimates he has devoted approximately 20 hours working on this case. (*Id.*, ¶ 6.)

Adam Heggen was employed by Heavenly Valley, LP, as a security guard from approximately 2015 to December 2019. (Mot., Liu Decl., Ex. F (Heggen Decl.), ¶ 3.) He first spoke with King & Siegel LLP to discuss a potential lawsuit in December 2019. (*Id.*, ¶ 6.) Heggen estimates he has devoted approximately 100 hours working on this case. (*Ibid.*)

Paul Greg Roberds was employed by Vail primarily as a lift mechanic from approximately October 2004 to January 2021. (Mot., Liu Decl., Ex. G (Roberds Decl.), ¶ 2.) He first spoke with James Hawkins of James Hawkins APLC to discuss a potential lawsuit. (*Id.*, ¶ 3.) Roberds estimates he has devoted approximately 20 hours working on this case. (*Id.*, ¶ 6.)

The Class Representatives declare that their work on the case includes, but is not limited to, the following: telephone consultations with Class Counsel, including regular updates on the case; searching their electronic and paper records to gather documents relevant to the case; reaching out to other Vail employees to help Class Counsel investigate the case; providing responses to Class Counsel regarding Vail's policies and practices; reviewing and commenting on draft pleadings; helping Class Counsel prepare for mediation, and being available by telephone during the mediation; communicating

frequently with Class Counsel during settlement negotiations; and reviewing and evaluating the Settlement Agreement.

The Class Representatives acknowledge that participating in this case poses a risk of damaging their future employment prospects in the snow sports industry and beyond. Because this case has received considerable attention, there is an increased risk that future employers will discover that they served as named plaintiffs in an employment lawsuit and retaliate against them. Further, the Class Representatives accepted the risk of having to pay costs to Vail in this case if plaintiffs ultimately lost.

In light of the above, as well as the significant benefits obtained on behalf of the Class, $10,000 each for the Class Representatives appears to be a reasonable inducement for their participation in the case. Accordingly, an incentive award in the amount requested is approved.

In summary, the court grants final approval of the Settlement as fair, adequate, and reasonable. Plaintiffs' motion for attorney fees, costs, and Class Representative incentive awards are granted as requested.

TENTATIVE RULING # 2: PLAINTIFFS' MOTIONS FOR FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT AND FOR ATTORNEY FEES, COSTS, AND CLASS REPRESENTATIVE INCENTIVE AWARDS ARE GRANTED AS REQUESTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. THE PARTIES ARE LIMITED TO 15 MINUTES OR LESS FOR ARGUMENT

FOR MATTERS SET ON THE LAW AND MOTION CALENDAR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. JOHNSON, ET AL. v. JOHNSON, SC20180141

OSC Re: Contempt of Court

TENTATIVE RULING # 3: PERSONAL APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, AUGUST 19, 2022, IN DEPARTMENT FOUR.

4. YOUNG v. HANSON, SC20200144

Motion for Leave to File First Amended Complaint

This is a breach of contract action arising from defendant's allegedly unauthorized solicitation of plaintiff's hair salon customers. Pending is plaintiff's motion for leave to file a First Amended Complaint to add causes of action for misappropriation of trade secrets and tortious interference with prospective economic advantage.

The motion is not opposed. The proof of service to the motion declares that defendant was served electronically via her attorney on July 27, 2022. If opposition papers are not timely filed, the court, in its discretion, may deem it a waiver of any objections and treat it as an admission that the motion is meritorious and may grant the motion. (Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C).)

Given defendant's admission that the motion is meritorious, the motion is granted.

TENTATIVE RULING # 4: PLAINTIFF'S MOTION IS GRANTED. THE FIRST AMENDED COMPLAINT MUST BE FILED AND SERVED NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. THE PARTIES ARE LIMITED TO 15 MINUTES OR LESS FOR ARGUMENT FOR MATTERS SET ON THE LAW AND MOTION CALENDAR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

5. MEDINA, ET AL. v. EL DORADO SENIOR CARE, ET AL., PC20190064

Motion for Leave to File Amended Complaints

This is an employment-related action commenced in January 2019. In December 2020, this action was consolidated with *Saavedra v. El Dorado Senior Care*, El Dorado County Superior Court Case No. PC20200047, with this action deemed the lead case. Pending is plaintiffs' motion for leave to file amended complaints. Plaintiffs seek to remove four causes of action which they no longer wish to pursue, add specific allegations concerning defendants' liability pursuant to Labor Code §§ 558.1 and 1194.2, and add a claim for tax neutralization damages and liquidated damages.

Leave of court is required to amend any pleading except as provided by Code of Civil Procedure § 472. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading …." (Code Civ. Proc., § 473(a)(1).) A trial court may allow the amendment of a pleading at any time up to and including trial. (Code Civ. Proc., § 576.)

"It is well established that 'California courts "have a policy of great liberality in allowing amendments at any stage of the proceeding so as to dispose of cases upon their substantial merits where the authorization does not prejudice the substantial rights of others." [Citation.] Indeed, "it is a rare case in which 'a court will be justified in refusing a party leave to amend his [or her] pleading so that he [or she] may properly present his [or her] case.' " [Citation.]' [Citation.] Thus, absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. [Citation.]" (*Bd. of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

As a preliminary matter, plaintiffs object to defendants' late-filed opposition. Defendants' opposition was due no later than nine court days prior to the hearing. (Code Civ. Proc., § 1005(b).) The opposition was served by overnight mail and electronically. Service by overnight mail extends the time to respond by two calendar days, and electronic service extends the time to respond by two court days. (Code Civ. Proc., §§ 1005(b),

1010.6(a)(4)(B).) Defendants did not file and serve their opposition until August 9, which is several days late. If opposition papers are not timely filed, the court, in its discretion, may deem it a waiver of any objections and treat it as an admission that the motion is meritorious and may grant the motion. (Local Rules of the El Dorado County Superior Court, Rule 7.10.02(C).) The court will not consider defendants' late-filed opposition and deems it as an admission that the motion is meritorious.

Alternatively, even if the court were to consider defendants' opposition, the court would grant plaintiffs' motion on the merits. There is nothing in the record to suggest that plaintiffs' counsel are not acting in good faith. Although trial is currently set to commence in October 2022, the court may allow the amendment of a pleading at any time up to and including trial. (Code Civ. Proc., § 576.) Further, the amended factual allegations against the individual defendants are not prejudicial to defendants as individual liability was already at issue. Lastly, defendants are not prejudiced by the request to add a cause of action for liquidated damages pursuant to Labor Code § 1194.2, as the current complaints in both actions request the liquidated damages under section 1194.2 in their respective Prayer for Relief. Thus, on balance, the factors weigh in favor of granting leave to amend.

The motion is granted.

TENTATIVE RULING # 5: PLAINTIFFS' MOTION IS GRANTED. THE AMENDED COMPLAINTS MUST BE FILED AND SERVED NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF

SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. THE PARTIES ARE LIMITED TO 15 MINUTES OR LESS FOR ARGUMENT FOR MATTERS SET ON THE LAW AND MOTION CALENDAR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

6. MATTER OF JULIO RODAS CASTRO & ANA RODAS CASTRO, 22CV0607

OSC Re: Name Changes

TENTATIVE RULING # 6: PETITION IS GRANTED.

7. MATTER OF BAYANI, 22CV0826

OSC Re: Name Change

To date, Proof of Publication is not in the court's file.

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, AUGUST 19, 2022, IN DEPARTMENT FOUR.

8. RICHARDSON v. COUNTY OF EL DORADO, 22CV0639

Motion to Transfer Case to Cameron Park

This is a premises liability action arising from a motorcycle accident that occurred on Lotus Road, approximately 300 feet north of Granite Creek Road. (Compl., ¶ 1.) Pending is defendant County of El Dorado's motion to transfer the case to Cameron Park. The County's request for judicial notice ("RJN") of item numbers 1 and 2 is granted. (Evid. Code, § 452(d)(1), (h).)

"A superior court may transfer an action or proceeding filed in one location to another location of the superior court." (Code Civ. Proc., § 402(b).) "Any action or proceeding may, for good cause, be transferred from the South Lake Tahoe Session to the Session at the County Seat, or vice versa, on motion of any party or the Courts." (Local Rules of the El Dorado County Superior Court ("Local Rule"), rule 2.00.08(D)(6).) However, "[c]ases may only be transferred with the specific consent of the presiding judge." (Local Rule 2.00.09(A).)

The County's motion is made on the basis that the accident did not occur within the South Lake Tahoe Area, as defined in Local Rule 2.00.08(C). (RJN, ¶ 2.) Rather, the accident occurred within the area of the court's Placerville Session, west of Placerville and approximately 11 miles from the Cameron Park courthouse. (Mot., Decl. of Andrew T. Caulfield, ¶¶ 4–5.)

Further, defense counsel asserts that transferring this action to Cameron Park is in the economic interests of both parties as well as the taxpayers of the County. Plaintiff is a resident of Sacramento County. (Compl., ¶ 1.) Defense counsel's office is in El Dorado Hills, and plaintiff's counsel is located in Los Angeles. (Mot., Decl. of Andrew T. Caulfield, ¶¶ 4–5.) Sacramento County and El Dorado Hills are considerably closer, and thus more conveniently located, to Cameron Park than South Lake Tahoe. It will also be simpler and faster for plaintiff's Los Angeles-based attorneys to travel to Cameron Park than South Lake Tahoe. Because Cameron Park is a more convenient location for both parties, the

parties will save money on litigation costs that would otherwise be incurred if they were required to litigate this matter in South Lake Tahoe, including the extra time and costs for travel, hotels, meals, appearance fees, and so on.

To date, plaintiff has not opposed the motion. The proof of service to the motion declares that plaintiff was served with the moving papers by mail on July 8, 2022. Opposition papers were due no later than nine court days prior to the hearing. (Code Civ. Proc., § 1005(b).) The court deems plaintiff's non-opposition as an admission that the motion is meritorious. (Local Rule 7.10.02(C).)

Good cause appearing, and given plaintiff's admission that the motion is well taken, it appears appropriate to grant the motion and, with the consent of the Presiding Judge, transfer the action to Cameron Park.

TENTATIVE RULING # 8: DEFENDANT'S MOTION IS GRANTED. UPON CONSENT OF THE PRESIDING JUDGE, THIS MATTER WILL BE TRANSFERRED TO CAMERON PARK. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. THE PARTIES ARE LIMITED TO 15 MINUTES OR LESS FOR ARGUMENT FOR MATTERS SET ON THE LAW AND MOTION CALENDAR. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

9. SUTTER TAHOE, LP v. SILVER STATE INVESTORS, LLC, 21CV0280

Motion for Appointment of Arbitrator

TENTATIVE RULING # 9: THE COURT HAVING BEEN NOTIFIED THAT THE CASE HAS SETTLED, MATTER IS DROPPED FROM THE CALENDAR.