

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

I. Recitals.

A. Introduction. This class action settlement agreement (the “Settlement Agreement”) is hereby entered into by and among Defendants Westshore Hospitality LLC, Freshore LLC, John Gibb, and Blaine Wetzel (collectively “Defendants”) and the Named Plaintiffs Kiel Kleeburg and Valerie Rupp Hauer (collectively “Plaintiffs”), who are acting both individually and in their capacities as the proposed Class Representatives for a proposed Settlement Class defined herein in the class action entitled *Kleeberg, et al. v. West Shore Hospitality LLC, et al.*, Whatcom County Superior Court Civil Case No. 17-2-01403-2 (the “Action”).

B. Purpose. Pursuant to the terms set forth below, Plaintiffs and Defendants enter into this Settlement Agreement to bring about a full, complete and final resolution of all claims asserted in the Action against Defendants by Plaintiffs on behalf of the Settlement Class. The parties agree to settle the Action as it relates to Defendants pursuant to the provisions of this Settlement Agreement, which are set forth in detail below. Plaintiffs and counsel for Plaintiffs judge the Settlement Agreement to provide fair, reasonable, and adequate relief to the Settlement Class and to be in the best interests of the Settlement Class.

C. Class Certification. Solely for the purposes of this Settlement Agreement, Plaintiffs and Defendants (hereafter, the “Parties”) agree that this Case should be certified and finally adjudicated as a class action on behalf of the Settlement Class defined herein.

D. Investigations and Due Diligence. The Parties have conducted extensive informal and formal discovery and investigation of the facts and analysis of the law during their respective prosecutions of this Action. As part of this review and investigation, the Parties and their counsel have: (A) interviewed various witnesses; (B) collected and analyzed time records, payroll data, and other information concerning the composition of the Settlement class and the merits and possible extent of Plaintiffs’ claims and Defendants’ defenses; and (C) amply considered and analyzed their respective claims and defenses.

E. Mediation and Settlement Negotiations. The Parties engaged in settlement negotiations during a mediation held before Judge Paris Kallas (Ret.) of WAMS, (the “Mediator”), on November 12, 2019. The mediated discussions failed but allowed the Parties to further understand their respective positions. Following the mediation, the parties engaged in additional formal discovery. In October 2020, after reviewing discovery responses, the Parties engaged in settlement negotiations, and on October 23, 2020, agreed to the essential terms of this Settlement. This Settlement Agreement includes and expands upon those terms. All of the Parties’ settlement negotiations have been conducted in good faith and at arm’s length. Through the Parties’ mediation conference and their subsequent communications directly with each other, the Parties have reached a class action settlement of this Action that they believe to be fair, adequate, reasonable, and in the best

interests of the Plaintiffs and the Class. This Agreement memorializes the terms of the final Settlement agreed to by the Parties as the result of the negotiations just described.

II. Settlement Terms.

A. Definitions.

1. The “Effective Date” of this Settlement Agreement shall be the later of either (1) the expiration of the time for filing an appeal from the Superior Court’s entry of a final judgment order (31 calendar days from entry of final judgment) or (2) if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial approval of this Settlement Agreement.
2. The “Settlement Administrator” means an entity to be identified by Plaintiff’s counsel and subject to the Superior Court’s approval.
3. Subject to approval by the Superior Court, the “Settlement Class” or “Settlement Class Members” shall include ninety-nine (99) current and former non-supervisory employees identified by the Parties who worked for Defendants at the Willows Inn on Lummi Island from July 13, 2014 through December 31, 2017, exclusive of those who timely opt out of the Settlement Agreement pursuant to the procedures identified below.
4. “Eligible Class Members” refers to those Settlement Class Members who timely submit Claim Forms to participate in the Settlement Award. The Claim Forms shall be substantially complete and signed by the Eligible Class Member consistent with Section II.D.2.b below.
5. The “Initial Notice Mailing Date” is the date that the Settlement Administrator first mails Notice of Settlement approved by the Court to all Settlement Class Members.
6. The “Notice Deadline” is forty-five (45) days after the Initial Mailing Date.
7. “Class Counsel” means Rekhi & Wolk, P.S., subject to the Superior Court’s approval.
8. “Claim Form” means the form attached hereto as Exhibit B.

B. The Settlement Proceeds. Subject to the Superior Court approving all the material terms of this Settlement Agreement, Defendants agree to pay a maximum

amount of \$600,000, which includes of Defendants' employer-side share of FICA, FUTA, and other similar, mandatory employer-side payroll taxes ("Settlement Proceeds").

From the Settlement Proceeds, the following distributions will be made, subject to Superior Court approval:

1. Incentive awards to Plaintiffs of \$5,000 each for their service as Settlement Class representatives. If the Courts award anything less than \$5,000 each in relation to the incentive award request, then the difference between the amounts proposed and the amounts received by Plaintiffs shall be treated as part of the Class Fund.
2. Settlement administration expenses not to exceed \$9,000. If the Courts award anything less than \$9,000 (for example, the actual cost of the settlement administration expenses is less than \$9,000), then the difference between the amount awarded by the Court shall be treated as part of the Class Fund.
3. Attorneys' Fees and Litigation Costs: Class Counsel shall apply to the Superior Court for an award of attorneys' fees not to exceed 25% of the Settlement Proceeds. Class Counsel shall also apply to the Superior Court for reimbursement of Class Counsels' litigation costs.
4. The remaining funds after the foregoing, as approved by the Superior Court, shall be paid to the Settlement Class (the "Class Fund"), subject to Superior Court approval, except for mandatory taxes to be paid to the appropriate government authorities. The payment to Eligible Class Members will be distributed to Eligible Class Members in accordance with Section II.C.

Within seven (7) calendar days after the Superior Court grants preliminary approval of the Settlement Agreement or by December 1, 2020, whichever is later, Defendants shall pay the Settlement Proceeds into counsel for Defendants IOLTA trust account. Within seven (7) calendar days after the Effective Date, counsel for Defendants shall disburse the Settlement Proceeds from their trust account to the Settlement Administrator to be distributed as set forth in this Agreement, pursuant to the terms and approval of the Superior Court.

C. Distribution of the Settlement Proceeds. Subject to Superior Court approval, the Settlement Administrator shall distribute the Class Fund to Eligible Class Members as set forth below:

1. **Class Members' Pro Rata Settlement Awards:** Subject to approval by the Superior Court, the Class Fund shall be distributed

to all Eligible Class Members, with each such member being entitled to an individual award representing that member's pro rata share. Each Eligible Class Member's pro rata share will be based on employment, time and payroll information produced by Defendants and based on interviews of Settlement Class Members by Class Counsel.

2. **Calculation of Settlement Awards:** The initial calculations for the Settlement Awards for Eligible Class Members will be based on the damage computations of Class Counsel, with each Eligible Class Member being awarded a proportionate share of the Class Fund, after employer-side taxes are deducted from the total amount of the Class Fund. The damage computations will be based on time and payroll records provided by Defendants to Plaintiffs, as well as information gained directly by Class Counsel from Plaintiffs and Settlement Class Members concerning their working hours and potential missed breaks. Class Counsel shall provide Defendants and the Settlement Administrator with an electronic report setting forth the results of their calculation of the gross Settlement Awards for Eligible Class Members thirty (30) days prior to the Settlement Administrator's deadline to disburse awards to Eligible Class Members as set forth below.
3. **Allocation and Disbursement of Settlement Awards:** Forty (40) percent of each Eligible Class Member's final Settlement Award will be treated as back wages (the "Wage Awards"), and thus subject to normal employee payroll tax withholdings and employer payroll tax payments. The Wage Awards shall be reported to taxing authorities on IRS Form W-2. Subject to Superior Court approval, the Settlement Administrator shall deduct the employee's share of payroll taxes from the Wage Awards to each Eligible Class Member and shall remit that amount to the appropriate taxing authorities. Subject to Superior Court approval, the Settlement Administrator shall also be responsible for paying all required employer-side payroll taxes on the Wage Awards of Eligible Class Members (including employer's share of FICA, FUTA, and any other employer-side, Washington state requirements) to the appropriate taxing authorities, which shall be deducted from the amount designated as the Class Fund.

The Settlement Administrator shall be responsible for performing all payroll functions reasonably necessary to administer the Settlement in conformity with this Agreement, including, but not limited to, preparing the Wage Award disbursements to be paid to Eligible Class Members and reporting payment of those Wage Awards to all required taxing and other authorities arising out of or

relating to those Wage Awards.

The other sixty (60) percent of each Eligible Class Member's final Settlement Award will be treated as prejudgment interest and exemplary damages (the "Exemplary Awards") as to which there will be no employee payroll tax withholdings or employer payroll tax payments. The Settlement Administrator will issue all Exemplary Awards and will report those awards to taxing authorities as necessary on individual IRS Forms 1099.

D. Class Notice.

1. The Parties agree to request approval of the long form of mailing notice attached hereto as **Exhibit A** and/or a short form of a notice to be emailed attached hereto as **Exhibit B**. The Settlement Administrator will mail the long form notice and the Claim Form to all those Settlement Members for whom it can locate a mailing address and email the short form notice to all those Settlement Members for whom Defendants and Class Counsel can provide an email address. The Settlement Administrator will also ensure that Settlement Class Members are provided a link to complete and submit Claim Forms electronically on the internet directly to the Settlement Administrator. The fact that the Superior Court may require changes in the form of notices does not invalidate this Settlement Agreement if the changes do not materially affect the substance of the Settlement Agreement.
2. The Notices shall provide Settlement Class Members with the opportunity to submit individual Claim Forms and/or object to the Settlement by or before the Notice Deadline. Subject to the Superior Court's approval, Notice of the Settlement shall be provided using the following procedures:
 - (a) No later than twenty (20) days after the entry of an order granting preliminary approval of this Settlement Agreement, the Settlement Administrator shall issue notice to all proposed Settlement Class members in the form and manner approved by the Superior Court. The date on which these notices are sent shall be deemed the "Initial Notice Mailing Date."
 - (b) The Notices shall provide that, in order to receive a Settlement Award, each Settlement Class Member must timely submit a completed, signed Claim Form that confirms his/her contact information. The fully completed Claim Form must be postmarked, delivered, or submitted to the Settlement Administrator by the Notice Deadline.

E. Claims Administration.

1. **Eligible Class Member Awards:** Pursuant to approval by the Superior Court, the Settlement Administrator shall prepare a Wage Award and Exemplary Award from the Class Fund for each Eligible Class Member in accordance with II.C above. The Settlement Administrator will mail the checks to the Eligible Class Members pursuant to the approval of the Superior Court within fourteen (14) calendar days after receiving the Settlement Proceeds from the Defendants.
2. **Attorneys' Fees and Litigation Costs:** The Settlement Administrator shall disburse to Class Counsel the amounts of attorneys' fees and costs awarded by the Superior Court within fourteen (14) calendar days after receiving the Settlement Proceeds from the Defendants.
3. **Class Notice and Claims Administration Costs:** The Settlement Administrator shall receive the amount approved by the Superior Court for such notice and claims administration costs and may deduct that amount upon receipt of the Settlement Proceeds.
4. **Class Representative Incentive Award:** The Settlement Administrator shall disburse to each Plaintiff the amount approved and awarded by the Superior Court as an incentive award within fourteen (14) calendar days after receiving the Settlement Proceeds from the Defendants. These awards do not reflect wages and are therefore not taxable as wages. As such, the Settlement Administrator will issue a 1099 to Plaintiffs to reflect the amount of the awards.
5. **Disbursement of Residual Funds:** If any Settlement Award check remains uncashed ninety (90) days after the check is mailed by the Settlement Administrator, the funds associated with that Settlement Award check shall be deemed unclaimed and abandoned. No later than 120 days after the checks are mailed by the Settlement Administrator, the Settlement Administrator shall pay one-half of the unclaimed and abandoned funds ("Residual Funds") to the Legal Foundation of Washington and the other one-half to the Washington Wage Claim Project as cy pres beneficiaries.

F. Objections to the Settlement Agreement.

1. The notice form sent to potential members of the Settlement Class shall inform them of the right to object to this Settlement

Agreement. If a Settlement Class Member wishes to have the Court consider such an objection, that Settlement Class Member must file with the Superior Court and mail to counsel for the Parties a written objection, along with any supporting documentation that the person wishes the Court to consider, by no later than forty-five (45) days from the Initial Notice Mailing Date. If such objection is submitted and overruled by the Court, the objecting Settlement Class Member shall remain fully bound by the terms of this Settlement Agreement so long as it is granted final approval by the Superior Court.

2. The Parties shall submit any responses to objections no later than ten calendar days after receiving the objection.
3. Neither Party nor their counsel shall encourage any member of the Settlement Class to file an objection to this Settlement Agreement.
4. Any Settlement Class Member who does not appear individually or through counsel and who does not challenge or comment upon the fairness and adequacy of this Settlement Agreement or Class Counsel's petition for attorneys' fees and expenses shall waive and forfeit any and all rights to appear separately or object. All members of the Settlement Class shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments in this Action.

III. Release.

As of the Effective Date of this Settlement Agreement, the Named Plaintiffs and all members of the Settlement Class, individually and as a Settlement Class, for themselves, their attorneys, spouses, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in the Settlement Agreement, shall fully and finally release and forever discharge Defendants Westshore Hospitality LLC, Freshore LLC, John and Diane Gibb, Blaine Wetzel, P. Timothy and Marcia McEvoy, and Lummi Westshore Partners, LLC, their successors, assigns, attorneys, officers, directors, agents and representatives (hereinafter collectively referred to as "Released Parties") from any and all past claims, demands, obligations, actions, causes of action, rights, rights of appeal, damages, costs, losses, expenses and compensation of any nature whatsoever whether based in tort, contract, common law, or other theory of recovery, in equity or in law, that were made or could have been made arising out of or in any way related to the acts or omissions alleged by the Plaintiffs in the Action up and through to December 31, 2017.

It is expressly understood and agreed that this Release includes but is not limited to the release of the Released Parties from any claims, loss or damage sustained by the Plaintiffs or the Settlement Class Members based on federal, state, or local laws pertaining to unpaid wages, unpaid meal time, unpaid overtime, failure to comply with any

timekeeping or recordkeeping requirements, failure to allow rest and meal periods that comply with WAC 296-126, RCW 49.12, RCW 49.48, RCW 49.46, RCW 49.52, exemplary damages, interest, fees, costs, attorneys' fees and all other claims and allegations made in the Action, or any assertion of rights relating to any of the foregoing. It is also expressly understood and agreed that this Release only extends to such claims and attendant damages through to December 31, 2017.

IV. Preliminary and Final Approval Procedures.

A. No later than fourteen (14) calendar days after the execution of this Settlement Agreement, Counsel for Plaintiffs shall file a motion with the Superior Court for a preliminary order approving the Settlement Agreement.

B. The final approval hearing will be held on such date as the Superior Court, in its discretion, may order.

C. No later than fourteen (14) calendar days after the Notice Deadline, Class Counsel shall file a motion requesting that the Superior Court grant final approval of the Settlement Agreement, including payment of attorneys' fees and expenses, and enter final judgment as to Defendant in the Action.

D. In the event the Settlement Agreement is not given final approval in all material respects and as set forth in this Settlement Agreement, or the Superior Court's final approval order is reversed on appeal, the Settlement Agreement shall become null and void.

V. Final Approval Order.

The Parties shall use their best efforts to secure the Superior Court's issuance of a Final Approval Order. The Final Approval Order shall, among other things:

A. Approve the Settlement Agreement as fair, adequate and reasonable, and consistent and in compliance with the applicable provisions of the law; direct the Parties and their counsel to implement and consummate this Settlement Agreement according to its terms and provisions; and declare this Settlement Agreement to be binding on, and have res judicata and effect in all pending and future lawsuits or other proceedings encompassed by the release set forth in Section III of this Settlement Agreement (the "Release");

C. Find that notice substantially in the form of Exhibits A and B and the notice procedure implemented pursuant to this Agreement: (i) constitute the best practicable notice; (ii) constitute notice that is reasonably calculated, under the circumstances, to inform Class Members of their right to object to the proposed Settlement Agreement and to appear at the Final Approval Hearing; (iii) are reasonable and constitute due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable requirements of Washington's Rules of Civil Procedure and Due Process.

D. Dismiss the Action on the merits and with prejudice with respect to Defendants, without fees or costs to any party except as provided in this Settlement Agreement;

E. Incorporate the Release set forth in Section III;

F. Without affecting the finality of the Final Approval Order and Judgment for the purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and

G. Incorporate any other provisions as the Superior Court deems necessary and just.

VI. Miscellaneous Provisions.

A. No Admission of Wrongdoing. The Parties hereto acknowledge that the execution of this Settlement Agreement and the consummation of the transactions contemplated herein do not constitute any admission of liability by Defendants under state or federal law, whether or not such claims have been pled in the instant action.

C. Dismissal. In connection with the issuance of an order granting final approval of this Settlement Agreement, the Parties shall present the Court with a final order of dismissal with prejudice as to Defendants and request entry of that order upon completion of the terms and conditions of this Settlement Agreement and the Order Granting Final Approval.

D. Continuing Jurisdiction. The Washington Superior Court in and for Whatcom County shall have continuing jurisdiction over this Action for the purpose of implementing this Settlement Agreement and all related matters, including preliminary approval of the Settlement Agreement, final approval of the Settlement Agreement, entry of final judgment as to Defendants, and any post-judgment issues.

E. Reasonable Best Efforts. The Parties agree to undertake their reasonable best efforts, including, without limitation, all efforts contemplated herein, to carry out the terms of this Settlement Agreement. In addition to the documents and other matters specifically referenced in the Settlement Agreement, the Parties agree to execute and/or deliver, or cause to be executed and/or delivered, such other documents and/or other materials necessary to carry out the terms and conditions of this Settlement Agreement, as may be reasonably necessary to effect the obligations contemplated by the Settlement Agreement.

F. Amendments/Modifications. Subject to any power of the Superior Court to order a modification, this Settlement Agreement may be amended or modified only by a written instrument signed by each of the Parties and their respective counsel of record.

Amendment and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

G. Construction. The terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties. This Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Settlement Agreement.

H. Counterparts. This Settlement Agreement may be executed in counterparts and by facsimile, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

I. Tax Consequences: No opinions concerning the tax consequences of the proposed settlement to individual Class Members are given by Defendants, Plaintiffs, or Class Counsel, nor are any representations in this regard made by virtue of this Settlement Agreement. Each Class Member's tax obligations, if any, and the determination thereof, are the sole responsibility of the Class Member, and the tax consequences, if any, depend on the particular circumstances of each individual Class Member.

J. Governing Law: This Settlement Agreement shall be governed by, and interpreted according to, the law of the State of Washington without regard to its choice of law provisions.

K. Parties Bound: This Settlement Agreement shall be binding upon and inure to the benefit of Plaintiffs, the Settlement Class, and Defendants, and the respective heirs, successors and assigns of each of the foregoing.

L. No Evidence: In no event shall this Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceeding, except in a proceeding to enforce this Settlement Agreement or the relief provided herein. Further, neither this Settlement Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, used as, or deemed to be evidence or an admission or concession by any person of any matter, including but not limited to any liability or wrongdoing on the part of Defendants or as a waiver by them of any applicable defense.

M. Waiver: The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior or subsequent to, or contemporaneous with, this Settlement Agreement.

N. Non-Publication. The Parties (including the Released Parties) shall not be permitted to contact or respond to any requests from the press (including print,

television, radio, internet, or any other media) regarding this settlement except to refer them to the Court's file or Class Counsel's website for further information. Except for the above-identified motions and exhibits hereto, and the ability of Class Counsel to post the same, as well as this settlement agreement, on their website, the Parties (including the Released Parties) shall not at any time make any public announcement of the settlement of this case or otherwise publicize such settlement. Notwithstanding the above, Class Counsel and Plaintiffs are permitted to post and share information as to the existence of the settlement, including by providing Class Counsel's website regarding this case and associated documents, in order to contact and obtain contact from Settlement Class Members and to inform them of the settlement as well as to respond to their questions concerning the Settlement and this agreement and their related rights. This clause shall not restrict the Parties' and their counsel's efforts to obtain contact information for Settlement Class Members via social media or otherwise, and this paragraph shall not be read to constrain such attempts.

THE PARTIES HEREBY AGREE TO THE ABOVE SETTLEMENT AGREEMENT
BY THE FOLLOWING SIGNATURES:

For Plaintiffs and the Settlement Class Members:



Kiel Kleeburg

Date: 11/25/2020

Valerie Rupp Hauer

Date: _____

Approved as to form:

REKHI & WOLK, P.S.

By: _____
Hardeep S. Rekhi, WSBA #34579
Gregory A. Wolk, WSBA #28946
Attorneys for Plaintiffs

For Defendant Westshore Hospitality LLC:

television, radio, internet, or any other media) regarding this settlement except to refer them to the Court's file or Class Counsel's website for further information. Except for the above-identified motions and exhibits hereto, and the ability of Class Counsel to post the same, as well as this settlement agreement, on their website, the Parties (including the Released Parties) shall not at any time make any public announcement of the settlement of this case or otherwise publicize such settlement. Notwithstanding the above, Class Counsel and Plaintiffs are permitted to post and share information as to the existence of the settlement, including by providing Class Counsel's website regarding this case and associated documents, in order to contact and obtain contact from Settlement Class Members and to inform them of the settlement as well as to respond to their questions concerning the Settlement and this agreement and their related rights. This clause shall not restrict the Parties' and their counsel's efforts to obtain contact information for Settlement Class Members via social media or otherwise, and this paragraph shall not be read to constrain such attempts.

**THE PARTIES HEREBY AGREE TO THE ABOVE SETTLEMENT AGREEMENT
BY THE FOLLOWING SIGNATURES:**

For Plaintiffs and the Settlement Class Members:

Kiel Kleeburg

Date: _____



Valerie Rupp Hauer

Date: 11/28/2020

Approved as to form:

REKHI & WOLK, P.S.


By: 

Harddeep S. Rekhi, WSBA #34579

Gregory A. Wolk, WSBA #28946


Attorneys for Plaintiffs

For Defendant Westshore Hospitality LLC:


[Name], [Title] John Gibb, Managing Partner
Date: November 25, 2020.

For Defendant Freshore LLC:

[Name], [Title]
Date: _____


John Gibb
Date: November 25, 2020

Blaine Wetzel
Date: _____

Approved as to form:

ADELSTEIN, SHARPE & SERKA LLP

By: _____
Jeffrey P. Fairchild, WSBA #18895
Ivan M. Stoner, WSBA #43321
Attorneys for Defendants

For Defendant Freshore LLC:

[Name], [Title]

Date: _____



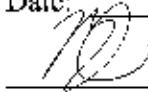
Blaine Wetzel • Owner

[Name], [Title]

Date: 11/16/2020

John Gibb

Date: _____



Blaine Wetzel

Date: 11/16/2020

Approved as to form:

ADELSTEIN, SHARPE & SERKA LLP

By:  _____

Jeffrey P. Fairchild, WSBA #18895

Ivan M. Stoner, WSBA #43321

Attorneys for Defendants

EXHIBIT A
LONG FORM NOTICE
OF SETTLEMENT

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WHATCOM COUNTY**

Kleeburg v. West Shore Hospitality LLC, et al.
Whatcom County Case No. 17-2-01403-2

— NOTICE OF CLASS ACTION SETTLEMENT —

A court authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued. However, your legal rights are affected whether you act or not. Please read this notice carefully.

TO: Current and former non-supervisory employees identified by the Parties who worked for Defendants at the Willows Inn on Lummi Island at any time between July 13, 2014 and December 31, 2017, while residing in the State of Washington.

- Two former employees filed a lawsuit against Westshore Hospitality LLC, Freshore LLC, John Gibb, and Blaine Wetzel (“Defendants”) for allegedly failing to pay minimum wage for all work performed, overtime wages, and to provide or pay for rest and meal breaks under Washington law. Defendants deny these allegations.
- The Superior Court for Whatcom County has granted preliminary approval of a proposed Class Action Settlement.
- The Class Action Settlement includes a total maximum settlement payment of \$600,000.00 to be paid by Defendants.
- To be eligible for a share of this payment, you must have been identified by the Parties as employed by Defendants as a non-supervisory employee at any time between July 13, 2014 and December 31, 2017 who may be entitled to receive damages.
- You may be entitled to money under the proposed Class Action Settlement. Please read this notice carefully. Your legal rights are affected by the Settlement, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	If you timely submit a completed claim form, included with this Notice, you will be eligible to receive a payment for your share of the Settlement. You may need to provide the Settlement Administrator any updated contact information to ensure you receive a payment. You will give up rights relating to the legal claims in this Case.
DO NOTHING	If you do not submit a claim form, you will not receive any funds from the Settlement while giving up your rights relating to the legal claims in this Case.
ASK TO BE EXCLUDED	You may “opt out,” which will remove you from the Class Action and you will receive no settlement payment. You will not give up the right to sue with respect to the legal claims in this Case.

OBJECT	You may make a legal objection to the proposed Settlement. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case. If you would like to object, you may not opt out of the Settlement.
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- Your rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to finally approve the Settlement. If the Court finally approves the Settlement, payments will be made after any appeals are resolved, if any.

BASIC INFORMATION

1. Why did I receive this Notice?

Defendants' records show that you were employed as a non-supervisory employee who worked at the Willows Inn on Lummi Island between July 13, 2014 and December 31, 2017. The Court directed this Notice to be sent to you to inform you about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to finally approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, if any, payments will be made to Class Members who timely submit a claim form and who do not affirmatively request to be excluded from the Settlement.

This Notice explains the Case, the Settlement, your legal rights, what Settlement Awards are available, who is eligible for them, and how they will be paid.

2. What is the Case about?

Plaintiffs Kiel Kleeburg and Valerie Rupp Hauer are former non-supervisory employees who worked at the Willows Inn on Lummi Island. They filed a putative class action lawsuit claiming that Defendants violated Washington State wage and hour laws by failing to pay at least minimum wage for all work performed, including overtime, and that Defendants failed to separately pay and provide rest and meal breaks as required by Washington law. Defendants deny these claims.

The Superior Court for Whatcom County is overseeing this Case. The lawsuit is known as *Kleeburg, et al. v. Westshore Hospitality, LLC, et al.*, Whatcom County Case No. 17-2-01403-2 (the "Case").

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called a "Class Representative" sues on behalf of other people whom they believe have similar claims. The people together are a "Class" or "Class Members." The employees who sued, and who represent the Class, are called the Plaintiffs.

The people or companies the Plaintiffs sue (in this case Westshore Hospitality LLC, Freshore LLC, John Gibb, and Blaine Wetzel) are called the Defendants. In a class action, one court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or Defendants. Instead, both sides agreed to a Settlement with no decision or admission of who is right or wrong. This allows the parties to avoid the risks and costs of a trial. The Court has determined there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of these issues will be made at the final fairness hearing. The Class Representatives and their attorneys think the Settlement is best for everyone in the Class.

WHO IS IN THE SETTLEMENT

5. How do I know whether I am part of the Class Action?

As part of the Settlement of the Case, the Superior Court has decided that everyone who fits the following description is a Class Member:

Ninety-nine (99) current and former non-supervisory employees identified by the Parties who worked for Defendants at the Willows Inn on Lummi Island from July 13, 2014 through December 31, 2017.

If it is approved, the Settlement and release of all Released Claims (defined below) against Released Parties will cover all Class Members who have not timely and affirmatively excluded themselves from the Case.

To be a part of and receive any money under the Settlement, Class Members need to complete and timely submit the attached claim form to the Settlement Administrator.

THE TERMS OF THE SETTLEMENT

6. What claims are covered by the Settlement?

The Settlement will resolve all of the claims Settlement Class Members could have brought against Defendants and any Released Party regarding the alleged failure to pay at least a minimum wage for all work performed, including overtime, as well as the alleged failure to pay or provide all the rest and meal breaks required by Washington law, as well as any claims for attendant overtime, penalties, interest, fees, costs, attorneys' fees and all other forms of relief that were sought or could have been sought based on the facts alleged in the Complaint relating to the above claims.

7. What are the basic terms of the Settlement?

Subject to Court approval, the essential terms of the Settlement are as follows:

Defendants will pay no more than \$600,000 as part of the Settlement, apportioned as follows:

- **Class Fund:** After deducting the other anticipated awards below, Settlement Class Members who timely submit claim forms and do not timely opt out of this Settlement will receive their share of at least \$420,000, excluding applicable employment related taxes.
- **Service Award:** Class Counsel will request a service award of \$5,000 each for the Class Representatives Kiel Kleeburg and Valerie Rupp Hauer in recognition of their time and effort in prosecuting the Case.

- **Settlement Administration Expenses Award:** Class Counsel will request a payment of up to \$9,000 for the Settlement Administrator for investigating and updating Class Members' contact information, mailing these notices, tracking opt outs and objections, and answering inquiries.
- **Attorneys' Fees and Costs Award:** Class Counsel will request a payment of up to \$150,000 for their attorneys' fees and \$3,000 in litigation costs they have incurred in representing Plaintiffs and the Class.

Monetary Relief: The amount available to the Settlement Class is intended to compensate Settlement Class Members for the wages, penalties, and interest, and other compensation they allegedly lost and damages they are allegedly owed as a result of the practices alleged in the Case.

Distribution of Settlement Fund: Each Class Member who submits a valid and timely claim form and does not request for exclusion will receive a settlement payment. Your settlement payment will be calculated based on Class Counsel's analysis of your payroll and time records while working at The Willows Inn, as well as based on interviews of Plaintiffs and other Class members. The calculation of the settlement award for each individual Settlement Class Member who submits a claim form will be based on the comparison between the dollar value of the potential unpaid wages the employee was entitled to while working at the Willows Inn between July 13, 2014 and December 31, 2017 and the aggregate dollar value of the potential unpaid wages that all Settlement Class Members who submit claim forms were potentially entitled to while working at the Willows Inn during that time. Checks will be mailed to Settlement Class Members by Simpluris, the Settlement Administrator. If any checks have not been cashed or deposited within ninety (90) days after distribution, the funds from those checks will be considered unclaimed property and deemed Residual Funds. These Residual Funds will be distributed to the Legal Foundation of Washington and the Washington Wage Claim Project. Defendants will not receive funds from any uncashed checks.

Tax Treatment of Settlement Awards: Forty Percent (40%) of each Settlement Class Member's settlement award will be treated as wages and subject to applicable tax withholdings and shall be reported to the taxing authorities and the Settlement Class Member on an IRS Form W-2. Sixty Percent (60%) of each Settlement Class Member's settlement award will be treated as non-wages from which there will be no tax withholdings and for which an IRS Form 1099 shall be issued to the taxing authorities and the Settlement Class Member. A portion of the \$600,000 Settlement Fund described above includes the required employer-paid taxes incurred as part of the Settlement.

Please consult an accountant regarding the taxes you may owe if you receive money from the settlement.

Release of Claims: If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Settlement Class Members who do not validly opt out of the Settlement will be bound by the Court's Final Judgment and will fully release and discharge Defendants and related entities and individuals based on the facts as alleged by the Plaintiffs through to December 31, 2017, including, but not limited to, any claims for unpaid wages, overtime, and unpaid meal and rest breaks, owed by Defendants.

For the full language of the release, and to review the entire settlement agreement please visit [\[website\]](#).

Dismissal of Action: Upon final approval, the Court will enter a judgment of dismissal of the Case with prejudice but shall retain jurisdiction to enforce the terms of the settlement.

HOW YOU CAN GET PAYMENT

8. How can I get a payment?

To get a payment, you must complete a Claim Form and return the Claim Form to the following address:

[address]

A Claim Form is attached to this Notice. A Claim Form is also available online at [website]. Read the instructions carefully, fill out the Claim Form, sign it, and mail it to the address. In the alternative you have the option to fill out the form online at [website]. All Claims forms must be postmarked or received by the Settlement Administrator no later than [NOTICE DEADLINE].

9. When would I get my payment?

The Court will hold a hearing on [DATE] at [TIME] to decide whether to finally approve the settlement. If the Court approves the settlement, the parties will then have to wait to see whether there is an appeal, if a timely and valid objection has been made. This will take at least thirty (30) days and, if there is an objection and appeal, can take up to a year or more to resolve. In the event of an appeal, information regarding the appeal's progress will be made available at [webpage]. If there is no appeal, we expect payments will go out within approximately sixty (60) days of the Court's final approval of the Settlement. Please be patient.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has decided that lawyers from the law firm of Rekhi & Wolk, P.S., are qualified to represent you and all Settlement Class Members. These lawyers are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by our own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will seek payment for a portion of their attorneys' fees and costs in the amount of up to \$153,000, which must be approved by the Court as part of the final approval of this Settlement. Class Counsel have been working on this case since approximately June 2017 and have not received any fees or reimbursements for the costs of the lawsuit.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. How do I exclude myself from the Settlement?

If you fit the definition of a Class Member and want to exclude yourself from the Settlement, you must request exclusion in writing by [NOTICE DEADLINE]. You may be excluded as a member

of the class by submitting a written request stating, “I request that I be excluded from the Class in the case of “Kleeburg, et al. v. Westshore Hospitality, LLC, et al.” The request must include your name, address, and signature. You must mail a copy of the letter to the Settlement Administrator at the following address postmarked no later than **[NOTICE DEADLINE]**:

If you exclude yourself from the Settlement (i.e., opt out), you will not receive any payment from the Settlement. You will also not be entitled to object to the Settlement. If you exclude yourself, you will not be bound by the terms of the Settlement, including the Release described in Section 7, above. This means you will retain the right to pursue any claims you may have against Defendants. If you do not exclude yourself from the Settlement, you will be deemed a Settlement Class Member and will be bound by all terms of the Settlement and any Final Judgment entered in this Case.

OBJECTING TO THE SETTLEMENT

13. If I want to object to the Settlement, how do I tell the Court?

If you are a Class Member, you may choose to object to the Settlement, personally or through an attorney, by mailing a written objection to the Settlement Administrator. You must do so in writing, and you must state “Notice of Objection” or similar words and the reasons you think the Court should not approve the Settlement. If you object, you must include your name, address, and telephone number, the name of the Case (*Kleeburg, et al. v. Westshore Hospitality LLC et al.*, Whatcom County Case No. 17-2-01403-2), the grounds for your objection to the Settlement, whether you are represented by an attorney, and your signature. You must mail a copy of the objection to the following address **postmarked no later than [OBJECTION DEADLINE]**:

If you do not timely object to the Settlement, then you waive any right to appeal from an order granting final approval of the Settlement. If your objection is denied by the Court, you will remain subject to the Settlement in any order granting final approval of the Settlement.

THE COURT’S FINAL APPROVAL HEARING

14. When and where will the Court decide to approve the Settlement?

The Court will hold a Final Approval Hearing at **[DATE and TIME]**, at the Superior Court for Whatcom County at 311 Grand Avenue, Bellingham, WA 98225. Please note that because of COVID-19, the hearing may be held electronically. If you would like to attend, please contact Class Counsel at least one week prior to the hearing.

If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing (*see* Section 16). After the hearing, the Court will decide whether to finally approve the Settlement, including Class Counsel’s request for attorneys’ fees, costs,

Settlement Administration Expenses, and Service Award for the named Plaintiffs. We do not know how long that decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also have your own lawyer attend, but that is not necessary. Again, if you would like to attend, please contact Class Counsel at least one week prior to the hearing.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying it is your “Notice of Intention to Appear in *Kleeburg v. Westshore Hospitality LLC*, Whatcom County Case No. 17-2-01403-2.” Be sure to include your name, address, phone number, and your signature. Your Notice of Intention to Appear must be **postmarked no later than [NOTICE DEADLINE]**, and be sent to the Settlement Administrator:

IF YOU DO NOTHING

17. What happens if I do nothing at all?

If the Settlement Administrator does not receive your Claim Form either postmarked or submitted electronically by **[CLAIM DEADLINE]**, you will not receive a share of the settlement, but you will release all claims against Defendant..

GETTING MORE INFORMATION

18. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting the website **[webpage url]** or calling Class Counsel at 206-388-5887, which has a copy of the Settlement Agreement posted, as well as this notice and claim forms. Class Counsel’s motion for final approval of the settlement agreement will be available for you to review on **[DATE]** at **[webpage url]**.

Kleeburg v. West Shore Hospitality LLC, et al.
Whatcom County Case No. 17-2-01403-2

— CLAIM FORM —

YOU MUST SUBMIT THIS FORM TO RECOVER ANY MONEY

To receive money from the settlement, complete this form and return it to the following mailing address postmarked no later than **[CLAIM DEADLINE]**. You may also submit the form electronically at **[website]** but it must be received by **[CLAIM DEADLINE]**.

Settlement Administrator

Name: _____

Address: _____

Street (please use your permanent mailing address)

City

State

Zip

I hereby affirm that I was worked at the Willows Inn on Lummi Island as a non-supervisory employee at any time July 13, 2014 to December 31, 2017. I wish to participate in the settlement described in the notice above and understand I am releasing the Released Parties from any and all claims, interest, attorneys' fees, costs, damages, and exemplary damages through to December 31, 2017, that were or could have been asserted by Plaintiffs on behalf of Settlement Class Members against Defendants based on the facts alleged in the Complaint, including, but not limited to, any claims related to unpaid wages, including unpaid overtime, and missed meal and rest breaks owed by Defendants through to December 31, 2017.

Signature: _____

Date: _____

If you change your address or phone number after sending in this form, please contact the Settlement Administrator at **[phone number]**. If you do not update your contact information, you may not receive your payment.

EXHIBIT B
EMAIL NOTICE OF
SETTLEMENT

SUPERIOR COURT OF WASHINGTON
IN AND FOR WHATCOM COUNTY

Kleeburg v. West Shore Hospitality LLC, et al.
Whatcom County Case No. 17-2-01403-2

If you worked as a non-supervisory employee at the Willows Inn on Lummi Island at any time between July 13, 2014 and December 31, 2017, a class action settlement may affect your rights.

- Two former employees filed a lawsuit against Westshore Hospitality LLC, Freshore LLC, John Gibb, and Blaine Wetzel (“Defendants”) for allegedly failing to pay minimum wage for all work performed, overtime wages, and to provide or pay for meal and rest breaks under Washington law. Defendants deny these allegations.
- The parties have reached a proposed Class Action Settlement. The Class Action Settlement includes a total maximum settlement payment by Defendants of \$600,000.
- You must timely submit a valid claim form to be eligible for a settlement payment. Your legal rights are affected by the Settlement, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Submit a Claim Form. If you timely submit a completed claim form, available at [website], you will be eligible to receive a payment for your share of the Settlement. You will give up rights relating to the legal claims in this Case.

Do nothing. You will NOT be eligible to receive a payment for your share of the Settlement and you will give up rights relating to the legal claims in this Case.

Ask to be excluded. You may “opt out,” which will remove you from the Class Action and you will receive no settlement payment. You will not give up the right to sue with respect to the legal claims in this Case.

Object. You may make a legal objection to the proposed Settlement. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case. If you would like to object, you may not opt out of the Settlement.

Go to a hearing. Ask to speak in Court about the fairness of the Class Action Settlement. If the Settlement is approved, you will still receive a payment and you will give up rights relating to the legal claims in this Case.

This notice is only a summary. Details about the lawsuit can be found on the Settlement Website or by calling [ADD].

A more detailed notice was also sent to you by mail on [ADD]. If you do not receive the notice, visit the [Settlement Website](#) and or contact the Settlement Administrator at [ADD](#) to update your information.

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)