

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DANIEL PEARSON,
BARBARA WALKER, and
STEPHEN THOMPSON, individually
and on behalf of all similarly
situated employees,

Plaintiffs,

v.

Case Number 8:08-cv-2395
Class Action Allegations

LAND SOUTH ADVENTURES, LLC,
a Florida Limited Liability Company,
d/b/a Cypress Gardens,

Defendant.

REVISED RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (“Agreement”) is entered into by and between Land South Adventures, LLC, (“Land South” or “Defendant”) and all named plaintiffs in the First Amended Complaint and their heirs, successors, assigns, executors and representatives of any kind, if any (collectively “Plaintiffs”).

RECITALS

WHEREAS, Plaintiffs were employed by Land South; and

WHEREAS, Plaintiffs have asserted claims on behalf of themselves and all other similarly-situated employees for violations of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 *et seq.* (the “WARN Claims”) in the case of *Daniel Pearson, Barbara Walker, and Stephen Thompson v. Land South Adventures, LLC*, Case No. 8:08-cv-02395-T-24AEP, United States District Court Middle District of Florida, Tampa Division (hereinafter referred to as the “Action”); and

WHEREAS, Plaintiffs and the Defendant have, in proceedings related to the Action, been represented by legal counsel of their choice; and

WHEREAS, the Parties agreed to meet with experienced class action mediator Hunter R. Hughes (Rogers & Hardin, LLP, Atlanta, Georgia) on September 9, 2009. In preparation therefore, the Parties exchanged letter briefs with the mediator and on that date reached an agreement to resolve this matter; and

WHEREAS, Plaintiffs understand and acknowledge that by entering into this Agreement they are waiving and releasing their right to recover damages claimed in the Action or that could have been claimed in the Action based on the facts as alleged in the Action; and

NOW, THEREFORE, in consideration of the foregoing and of the terms, conditions and agreements hereinafter set forth, Plaintiffs and the Defendant agree as follows:

1. Recitals. The Recitals and Background Statements are true and correct and are incorporated into this Agreement.

a. Contingencies. This Agreement is contingent upon Court Approval of the Consented Motion and Memorandum of Law for Preliminary Approval of Class and Release and Settlement Agreement and Petition for Appointment as Class Counsel and Approval of Attorney's Fees, Expenses and Costs (hereinafter, "Motion for Preliminary Approval"); provisional and final certification of settlement class described herein; distribution of the attached Notice of Class Settlement and Claims Procedure and Opportunity to Opt-out of and Object to Settlement and Final Approval of the Agreement, including dismissal with prejudice after approval of the proposed class and subject to a fairness hearing.

2. Compensation to Plaintiffs, Members of Proposed Class, and Class Counsel. The Plaintiffs agree to resolve the Action for a total amount of Three Hundred Eighty Thousand Seven Hundred Fifty Two Dollars and fifty cents (\$380,752.50) (referred to as the "Gross Settlement Amount" which reflects One Hundred Eighty Thousand Seven Hundred Fifty-Two

Dollars and fifty cents (\$180,752.50) in back pay damages for the putative class of employees of Land South who allegedly suffered an employment loss at the Cypress Gardens site within the thirty days preceding November 16, 2008, who were not given at least sixty days written notice of the plant closing or mass layoff that occurred on or about November 16, 2008 and are listed on Exhibit 1 (hereinafter, "the WARN Class"), and an amount of attorneys' fees, expenses and costs to be paid to Burr & Smith, LLP and Mazaheri Gadd, P.A. (hereinafter Class Counsel) not to exceed Two Hundred Thousand Dollars (\$200,000.00)). In the event the Court does not approve the full \$200,000 sought by Class Counsel, any funds not approved shall be paid to the WARN Class in pro rata shares on the dates of each payment called for herein. The Gross Settlement Amount may be adjusted as set forth in this Agreement. Payments shall be made as follows:

a. On or before December 8, 2009, a payment of Thirty Six Thousand One Hundred Fifty Dollars (\$36,150.00) plus an amount equal to the employer's share of FICA and FUTA, and other state-specific statutory deductions required to be paid by employers was deposited in the Burr & Smith, LLP Trust Account to be held in escrow until distribution to the WARN Class upon final approval of the Agreement. Also, on or before December 8, 2009, a payment of Forty Thousand Dollars (\$40,000.00) for attorneys' fees and costs was made to Burr & Smith, LLP Trust Account. Since these payments were timely made, the remainder of the settlement owed will be Three Hundred Four Thousand Six Hundred Two Dollars and no cents (\$304,602.00), subject to further reductions described herein.

b. On or before June 1, 2010, a payment of Thirty Six Thousand One Hundred Fifty Dollars (\$36,150.00) plus an amount equal to the employer's share of FICA and FUTA, and other state-specific statutory deductions required to be paid by

employers will be deposited in the Burr & Smith, LLP Trust Account to be held in escrow until distribution to the WARN Class upon final approval of the Agreement. Also, on or before June 1, 2010, a payment of Forty Thousand Dollars (\$40,000.00) for attorneys' fees and costs will be made to Burr & Smith, LLP Trust Account. If the June 1, 2010, payments are timely received, then the Gross Settlement Amount otherwise owed by Land South shall be reduced by \$76,150.50, reducing the remaining settlement amount owed to One Hundred Fifty Two Thousand Three Hundred One Dollars and no cents (\$152,301.00).

c. On or before September 1, 2010, a payment of Thirty Six Thousand One Hundred Fifty Dollars (\$36,150.00) plus an amount equal to the employer's share of FICA and FUTA, and other state-specific statutory deductions required to be paid by employers will be deposited in the Burr & Smith, LLP Trust Account to be held in escrow until distribution to the WARN Class upon final approval of the Agreement. Also, on or before September 1, 2010, a payment of Forty Thousand Dollars (\$40,000.00) for attorneys' fees and costs will be made to Burr & Smith, LLP Trust Account. If the September 1, 2010, payment is timely received, then the Gross Settlement Amount shall be reduced by another \$76,150.50, meaning that the three timely payments, each of \$76,150.50, by Land South will have fully satisfied the payments due under this Agreement. The sum of the three sets of timely payments of \$76,150.50 shall be known as the "Reduced Settlement Amount." Accordingly, if the December 8, 2009, the June 1, 2010, and the September 1, 2010 payments are timely made, then the Reduced Settlement Amount equal to Two Hundred Twenty Eight Thousand Four Hundred Fifty One dollars and fifty cents (\$228,451.50) shall have been paid in full.

d. Should the Reduced Settlement Amount not be paid in full as of September 1, 2010, then all amounts remaining unpaid as of September 1, 2010 from the remaining balance owed will commence accruing interest as of September 1, 2010 at the interest rate as established for post-judgment interest in the United States District Court for the Middle District of Florida until paid. Any scheduled payment made by Defendant in a lesser amount than owed from either the Reduced Settlement Amount or the Gross Settlement Amount shall be apportioned between WARN Settlement Class Members and Class Counsel in the percentage amounts of 36,150/76,150 percent to WARN Settlement Class Members and 40,000/76,150 percent to Class Counsel; however, in no event shall Class Counsel receive more than \$200,000.00 unless the Court approves additional attorneys' fees and costs for any motion to enforce the settlement terms or for collection efforts needed in the event the Reduced Settlement Amount is not paid on or before September 1, 2010.

e. Any amounts unpaid as of September 1, 2010 together with all interest owed thereon shall be paid by Land South Adventures, LLC upon the sale of the land and assets referred to as Cypress Gardens ("Cypress Gardens"), a legal description of which is attached as Exhibit 2. If Cypress Gardens is sold in whole or in part subsequent to the date of this Settlement Agreement, proceeds from such sale shall first be applied to payment of any secured creditors and Defendant agrees to establish an escrow account in the name of the Burr & Smith, LLP. Such payments shall continue to be made to secured creditors until all secured creditors are fully paid. Remaining proceeds of the sale, if any, shall be deposited into the escrow account referenced herein at time of closing in an amount up to the total amount of the Gross Settlement Amount or the remaining settlement amount owed. Defendant agrees not to disburse any proceeds from the sale of

Cypress Gardens to any person or entity including any shareholders or members of Land South Adventures, LLC, other than a secured creditor who has established a security interest in the land and assets referred to as Cypress Gardens until the payment obligations to Plaintiffs under this Agreement are satisfied. If the Cypress Gardens property or any portion thereof is sold prior to September 1, 2010, Defendant agrees that any amount remaining of the Reduced Settlement Amount of \$228,451.50 will be due and owing within ten business days from the date Defendant has disbursed proceeds of the sale to satisfy Defendant's obligations to secured creditors and that no disbursements to shareholders or members of Land South Adventures LLC shall be made from the proceeds of the sale until Defendant has paid the Reduced Settlement Amount to Class Counsel and the WARN Class pursuant to this Settlement Agreement. If such sale proceeds are not sufficient to pay the balance of the Reduced Settlement Amount, Defendant will make additional payments in accordance with the original schedule specified herein.

f. Right to Object: Any member of the WARN Settlement Class may object to the determination of average earnings per week used to calculate the WARN Settlement Class member's recovery or to the terms of the Stipulation, at or prior to the Final Fairness Hearing, provided that such objections are made in a writing mailed by First Class Mail, or its equivalent, to counsel for the Parties so that they are received no later than sixty (45) days after the initial mailing of the Notice to members of the Settlement Class. Such objection shall include the name and address of the objector, a statement of the basis for each objection asserted, supporting documentation, if any, and, if the objector is represented by counsel, the name and address of counsel. Counsel for the Parties may confer with the objecting WARN Class Member regarding his or her

concerns and if resolved prior to the Final Fairness Hearing, the Objector may withdraw his or her objection by mailing a notice of withdrawal by First Class Mail or its equivalent to counsel for the Parties prior to the Final Fairness Hearing or by withdrawing the objection at the Final Fairness Hearing. The parties will provide a statement to the Court providing their response to any unresolved objections no later than ten days prior to the Final Fairness Hearing. Any member of the Settlement Classes who fails to comply with the requirements of this paragraph will be deemed to have waived any right to object to the settlement.

g. Upon the Final Effective Date, which shall be eleven days after the Court's final approval order becomes non-appealable, or, if such order is appealed by a WARN Class member, the date of the final resolution of any and all appeals approving this Agreement, and within eleven days of any subsequent payments, Burr & Smith LLP will return the portion of the settlement proceeds attributable to back wages and the employer's estimated share of taxes to Defendant so that the proceeds can be distributed by Defendant's third-party payroll administrator. The distribution of back wages will be in accordance with the schedule provided by Class Counsel and will occur within ten business days after Defendant receives the funds. The back wages will be subject to all required employee paid payroll taxes (federal income taxes, state income taxes, employee share of FICA and FUTA taxes and other state specific statutory deductions) and other authorized or required deductions (garnishments, tax liens, child support, etc.). The checks for back wages will be forwarded to Burr & Smith, LLP for further distribution to class members. The third-party payroll administrator shall provide a W-2 Form to members of the WARN Class for the wage payments to be made pursuant to this Settlement Agreement. A 1099 Form will be issued for any interest payments made

pursuant to this Settlement Agreement. Land South shall provide Class Counsel with a 1099 Form for amounts paid to Class Counsel as attorneys' fees or costs pursuant to this Settlement Agreement. The expenses of the third-party payroll administrator shall be paid by Land South and shall not be deducted from the Gross Settlement Amount.

h. The settlement checks shall be annotated to indicate an expiration date after ninety (90) days, providing each WARN Class Member ninety (90) calendar days after the mailing of each settlement check to cash any settlement check issued and mailed to him or her. If any WARN Class Member does not cash their settlement checks within that 90-day period, the WARN Class Member's uncashed settlement check(s) will be void. Land South shall provide the funds remaining as a result of such uncashed checks to Burr & Smith, LLP, who will pay the said remaining funds to the designated *cy pres* beneficiary.

4. Payments to Be Held In Escrow Pending Final Court Approval. Class Counsel agrees to hold all payments in escrow until the Settlement Stipulation has been approved by the Court and the Action has been dismissed with prejudice. If Court approval is denied or if the Action is not dismissed with prejudice, Plaintiffs and their counsel will return any monies already paid to Burr & Smith LLP Trust Account or the third-party payroll administrator to Defendant within thirty days of the order denying approval or dismissal whichever is first.

5. Release of Claims by Plaintiffs. Upon final approval, Plaintiffs and members of the WARN Act who do not opt out of this Action release and forever discharge the Defendant from any and all WARN claims, and other claims, demands, rights, liabilities and causes of action of any kind or nature, known or unknown, arising prior to or through September 9, 2009, which are based on the facts alleged in the Action, including the right to demand compensation, benefits, damages, penalties, attorneys' fees, costs or expenses of any kind for the claims

released herein (referred to as “Released Claims”). Plaintiffs represent that they have not assigned, given or sold any portion of any claim discussed in this Agreement to anyone else.

6. No Admission of Liability. This Agreement does not constitute an admission by the Defendant that any action it took with respect to Plaintiffs was wrongful, unlawful or in violation of any statute, law or regulation. Instead, this Agreement is entered into by Plaintiffs and the Defendant solely for the purpose of compromise and to avoid the further risk and cost of litigation. Plaintiffs will not state, represent, suggest or imply to anyone that the Defendant is liable or at fault or has admitted liability for any of the acts alleged and released herein. Nothing in this Agreement, Motion for Preliminary Approval or any related materials, is to be construed or deemed as an admission by Defendant of any liability, culpability, negligence, or wrongdoing. Neither the Agreement nor any related materials may be construed as, offered, or deemed admissible in any arbitration or legal proceedings for any purpose except in an action or proceeding to approve, interpret, or enforce the Agreement. Furthermore, neither the Agreement, Motion for Preliminary Approval or any related materials shall constitute an admission, finding, or evidence that any requirement for class certification has been satisfied in the Action, except for the limited settlement purposes pursuant to the terms of this Settlement Stipulation. This Agreement shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret or enforce this Settlement Stipulation.

7. Duties of the Parties. As soon as practicable after the execution of this Agreement, but no later than December 10, 2009, on behalf of Plaintiffs, all potential members of the WARN CLASS, and Land South, the Parties shall submit the Settlement Agreement and file a Motion for an Order granting the requested relief. The Motion for an Order shall include a request that the Court preliminarily designate Bay Area Legal Services as *cy pres* beneficiary for unclaimed funds.

8. No Other Actions or Assignment. Plaintiffs represent and warrant that they have filed no other court actions, administrative actions or other proceedings of any kind against Defendants or its past or present employees which are currently pending before any federal, state or local administrative agency of any kind or court. Plaintiffs represent and warrant that nothing which would otherwise be released herein has been assigned, transferred, or hypothecated or purportedly assigned, transferred, or hypothecated.

9. Responsibility for Attorneys' Fees. Except as otherwise provided in this Agreement, it is agreed that each party shall be fully responsible for its respective attorneys' fees and costs, and it is expressly contemplated that the payments to be made under paragraph 3 above shall constitute compensation in full for all of Plaintiffs' attorneys' costs, and other expenses incurred by Plaintiffs' Counsel relating to the Released Claims.

10. Applicable Law. This Agreement shall be governed and interpreted by Florida law without regard to its conflicts of law principles. This Court shall retain jurisdiction for any action to enforce this Agreement.

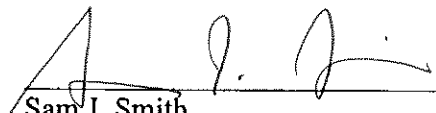
11. Entire Agreement. This Agreement constitutes and contains the entire agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior negotiations, agreements or understandings between the Parties concerning any of the provisions of this Agreement. Each of the Parties represents and acknowledges that in executing this Agreement neither has relied upon any representation or statement not set forth herein made by the other party or by any of the other party's agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise. If the release contained in paragraph 5 is challenged by Plaintiffs or by anyone on behalf of Plaintiffs and is found to be unenforceable by any court or tribunal of competent jurisdiction, then this Agreement will be null and void and Plaintiffs and their attorneys will return the amounts paid to them herein.

12. Final Release. The Parties understand this Agreement contains a final release for the Released Claims occurring through September 9, 2009. Plaintiffs agree that they are entering into this Agreement knowingly and voluntarily and without any coercion. Plaintiffs further acknowledge that they consulted with their attorneys, prior to signing this Agreement. Plaintiffs also acknowledge that they had a reasonable period of time within which to consider this Agreement prior to signing it.

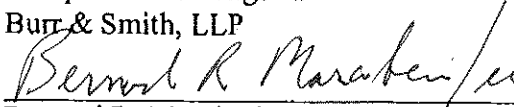
13. Binding Effect. This Agreement shall bind and benefit the heirs, personal representatives, administrators, successors, affiliates and assigns of the Parties.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereby have executed this Agreement on the dates written below:



Sam J. Smith
Marquerite M. Longoria
Burr & Smith, LLP



Bernard R. Mazaheri
Morgan & Morgan, P.A.

2-1-2010
Date:

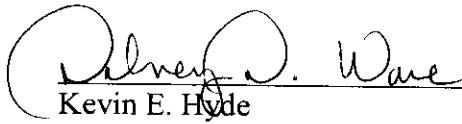
2-1-2010
Date:



W. John Gadd
MazaheriGadd P.A.

2-1-2010
Date:

As Attorneys for Plaintiffs



Kevin E. Hyde
Dabney D. Ware
Foley & Lardner LLP

February 1, 2010
Date:

As Attorneys for Defendant