

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is among:

Plaintiff:

State of Montana, Department of Public Health and Human Services ("State of Montana"), represented by Nicholas Domitrovich and Robert Lisham, Special Assistant Attorneys General and attorney, Randy Cox, of the Missoula, Montana law firm, Boone Karlberg, P.C.

Defendants:

Griggs Ferndale LLC d/b/a Ferndale Market ("Ferndale Market"), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

130 Central LLC d/b/a Remington Bar & Casino ("Remington Bar"), represented by Connor Walker of the Frampton Purdy Law Firm.

Scotty's Bar & Steakhouse LLC d/b/a Scotty's Bar and Casino ("Scotty's Bar"), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

Sykes Diner LLC d/b/a Sykes Diner and Market ("Sykes Diner"), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C. and Duncan Scott of Scott & Kienzie, P.C.

White Enterprises Inc., Your Turn Mercantile/Your Lucky Turn Casino ("Your Turn Mercantile"), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

Whereas, on or about October 23, 2020, State of Montana filed separate lawsuits in Flathead County District Court against each of the five defendants. The five cases were consolidated into *State of Montana, Department of Public Health and Human Services v. Griggs Ferndale LLC d/b/a Ferndale Market, et al.*, Eleventh Judicial District Court, Cause No. DV-15-2020-0000965 ("Lawsuit").

Whereas, upon filing the five lawsuits but without giving notice to Defendants or providing an opportunity to be heard, State of Montana sought an *ex parte* temporary restraining order enjoining Defendants from "operating in violation of the Mask Directive" and an order directing the Flathead County Sheriff's Office "to enforce the terms and conditions of the preliminary injunction and temporary restraining order." In all five cases, the judges denied State of Montana's request.

Whereas, immediately upon filing the five lawsuits, on information and belief, State of Montana notified the media about the lawsuits prior to notification or service on Defendants. Defendants learned they had been sued by the State of Montana from the media.

Whereas, on November 3, 2020, 11 days after State of Montana filed the Lawsuit, Greg Gianforte was elected governor of Montana. Among other things, Mr. Gianforte promised to move quickly to instill a culture of customer service at state agencies to better serve Montanans.

Whereas, at an all-day hearing before Judge Wilson on November 12, 2020, State of Montana sought a preliminary injunction to enforce the Mask Directive against Defendants. After State of Montana presented its evidence and witnesses, and Defendants had an opportunity to rebut the witnesses and evidence, Judge Wilson found State of Montana's request to be "meritless."

Whereas, at the hearing, Defendants asked Judge Wilson to award their attorney's fees for being forced to defend against a frivolous lawsuit. Judge Wilson declined to award their fees "at the present time" but said he would be "highly inclined" if the case proceeded:

But if this case goes any farther -- and by that, I mean to a final hearing on the merits -- and I find no more support for the State's position on the request for permanent injunction that I have seen in court today, then I would be highly inclined to award fees in this action. Because having found that the State's application is meritless at this point, the State is on notice that going further and the Court finding that the -- at the trial on the merits, that these grounds have not been proven, would probably provide this Court with a record necessary to conclude that the State had forced these Defendants to defend a frivolous action, which I believe is required before the Court can impose fees under *Floyd [sic - Foy] v. Anderson*.

Whereas, after the November 12 hearing, Defendants filed counterclaims against State of Montana seeking damages for abuse of process, constitutional torts and their attorney's fees.

Whereas, on January 4, 2021, Greg Gianforte was sworn in as Montana's 25th governor. Within several weeks of taking office, Governor Gianforte personally asked the parties here to resolve the Lawsuit. In his State of the State address on January 28, 2021, Governor Gianforte said:

Finally, as hard as 2020 was for Montana workers and business owners who were just trying to get by, the last thing we all needed was for the government to get in the way.

But that's exactly what happened in the fall. The state government under the previous administration sued five businesses, all in Flathead County, alleging they did not adequately enforce a mask mandate. The first judge in the case ruled against the state, saying

it didn't have enough evidence and that the businesses made reasonable efforts.

A pandemic with severe economic fallout is bad enough. We don't need government piling on.

That's why, tonight, I am announcing I have directed our staff to seek dismissal of the litigation against these businesses. Enough is enough.

Whereas, pursuant to the Governor's request, the parties here have agreed to settle on the terms set forth below.

Therefore, the parties agree as follows:

1. **Release of All Claims:** State of Montana shall release all claims against each Defendant, and each Defendant shall release all claims against the State of Montana. The parties shall execute the Mutual Release in substantially the form as **Exhibit "A."**
2. **State of Montana Payment of Attorney's Fees:** State shall pay Defendants' costs and reasonable attorney's fees incurred in the Lawsuit by paying the law firms as follows:

Frampton Purdy Law Firm:	\$32,645.50
Rocky Mountain Law Partners, P.C.:	\$52,220.52
Scott & Kienzle, P.C.:	<u>\$9,625.00</u>
TOTAL:	\$94,491.02

3. **Closing Date:** The parties will use best efforts to close on or before March 1, 2021 ("Closing Date").
4. **Payment to Trust Account:** At closing, State of Montana shall deliver a check in the amount of \$94,491.02 to the Rocky Mountain Law Firm, with the check payable to "Trust Account of Rocky Mountain Law Firm." From this payment, Mr. Fredrickson shall pay the law firms as set forth above.
5. **Press Release:** The parties or their counsel may make individual statements about the Lawsuit and its resolution as they deem appropriate.
6. **Pending Lawsuit:** Promptly following closing, Mr. Fredrickson shall file a stipulation and proposed order that dismisses all claims in the Lawsuit with prejudice. The

Stipulation for Dismissal with Prejudice and the proposed Order of Dismissal with Prejudice are attached as **Exhibit “B.”**

7. **Approval of Documents**: This Agreement is subject to review and approval of all documents by the parties and their respective legal counsel.
8. **Applicable Law and Forum**: This Agreement shall be construed pursuant to Montana law. The proper forum for legal disputes shall be the Eleventh Judicial District Court, Flathead County, Montana.
9. **Attorney's Fees and Costs**: In the event of a dispute arising from this Agreement, the prevailing party shall be entitled to its reasonable costs, expert and attorney's fees, including fees to enforce this provision.
10. **Additional Acts**: Each party, in a timely manner, shall perform any further acts and shall execute and deliver all documents that may be reasonably necessary to carry out this Agreement, including post-closing.
11. **Authority and Binding Effect**: Each party represents and warrants that it has authority to enter this Agreement and the Agreement is binding on it and its heirs, successors and assigns.
12. **Entire Agreement and Modifications**: The parties enter this Agreement with their full knowledge and consent, and with advice of their own legal counsel. This Agreement constitutes the entire understanding between the parties for the contemplated transaction, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement. This Agreement may not be waived, modified, amended, discharged or terminated except in a document signed by all parties.
13. **Counterpart Signatures**: This Agreement may be executed in separate counterparts and email or facsimile copies bearing the signatures of a party shall be treated the same as an original signature.
14. **Effective Date of Agreement**: This Agreement's effective date shall be deemed to be the date of the last signature below.

[Signatures on separate pages for ease of signing.]

Plaintiff:

State of Montana, Department of Public Health and Human Services

By: Adam Meier
Name

Director, DPHHS
Title

111 N. Sanders St, Helena, MT 59601
Address

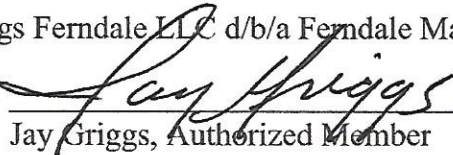
406 444 5623
Phone Number

Date: March 16, 2021

Defendants:

Griggs Ferndale LLC d/b/a Ferndale Market

By:


Jay Griggs, Authorized Member

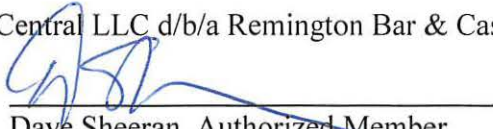
1845 Montana Hwy 209, Bigfork, MT 59911

Date:

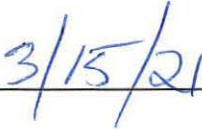
3/15/2021

130 Central LLC d/b/a Remington Bar & Casino

By:

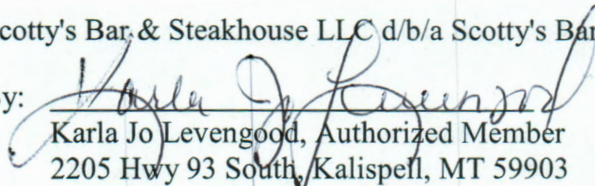

Dave Sheeran, Authorized Member
130 Central Avenue, Whitefish, MT 59937

Date:



Scotty's Bar & Steakhouse LLC d/b/a Scotty's Bar and Casino

By:

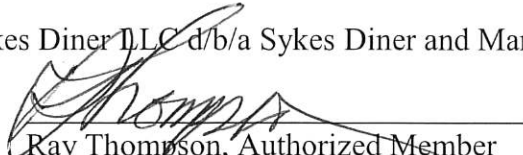

Karla Jo Levengood, Authorized Member
2205 Hwy 93 South, Kalispell, MT 59903

Date:

3/17/21

Sykes Diner LLC d/b/a Sykes Diner and Market

By:


Ray Thompson, Authorized Member
P.O. Box 2294, Kalispell, MT 59903

Date: 03/15/2021

White Enterprises Inc., Your Turn Mercantile/Your Lucky Turn Casino

By: _____

Doug White, Owner/Shareholder
7505 Hwy 35, Bigfork, MT 59911

Date: _____

Mar 11 / 2021

Exhibits:

A: Mutual Release

B: Stipulation for Order of Dismissal with Prejudice and proposed Order of Dismissal with Prejudice

MUTUAL RELEASE

This Mutual Release (“Release”) is among:

Plaintiff:

State of Montana, Department of Public Health and Human Services (“State of Montana”), represented by Nicholas Domitrovich and Robert Lisham, Special Assistant Attorneys General.

Defendants:

Griggs Ferndale LLC d/b/a Ferndale Market (“Ferndale Market”), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

130 Central LLC d/b/a Remington Bar & Casino (“Remington Bar”), represented by Connor Walker of the Frampton Purdy Law Firm.

Scotty's Bar & Steakhouse LLC d/b/a Scotty's Bar and Casino (“Scotty’s Bar”), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

Sykes Diner LLC d/b/a Sykes Diner and Market (“Sykes Diner”), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C. and Duncan Scott of Scott & Kienzle, P.C.

White Enterprises Inc., Your Turn Mercantile/Your Lucky Turn Casino (“Your Turn Mercantile”), represented by Bruce A. Fredrickson and Angela M. LeDuc of Rocky Mountain Law Partners, P.C.

1. **Description of Dispute:** This Release concerns events surrounding Plaintiff’s enforcement of the masking directive and Defendants’ compliance with the masking directive (“Dispute”) and the five lawsuits among the parties that were consolidated into *State of Montana, Department of Public Health and Human Services v. Griggs Ferndale LLC d/b/a Ferndale Market, et al.*, Eleventh Judicial District Court, Cause No. DV-15-2020-0000965 (“Lawsuit”).
2. **Consideration:** The consideration for this Release is set forth in the Settlement Agreement and associated documents among the parties.
3. **Mutual Release:**
 - A. Plaintiff fully and forever releases and discharges each Defendant, their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from all actions, claims, causes of action,

demands, or expenses for damages, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Dispute or Lawsuit.

- B. Each Defendant fully and forever releases and discharges Plaintiff, its successors, assigns, agents, partners, employees and attorneys from all actions, claims, causes of action, demands, or expenses for damages, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of the Dispute or Lawsuit.

4. **Release of Insurer:**

- A. Plaintiff further releases all claims and obligations concerning any of each Defendant's insurance policies applicable to Plaintiff's claims (if any) and all claims arising out of the investigation, handling, adjusting, defense or settlement of the claim including, without limitation, any claims under Section 33-18-242, MCA.
- B. Each Defendant further releases all claims and obligations concerning any of Plaintiff's insurance policies applicable to each Defendant's claims (if any) and all claims arising out of the investigation, handling, adjusting, defense or settlement of the claim including, without limitation, any claims under Section 33-18-242, MCA.

5. **Future Damages:** Because damages and losses resulting from the Dispute may not be fully known and may be more numerous or more serious than it is now understood or expected, this Release still applies to future claims, actions causes of action, damages and losses resulting from the Dispute, even though now unanticipated, unexpected and unknown, as well as any and all damages and losses which have already developed and which are now known or anticipated arising from the Dispute and Lawsuit.

6. **No Admission of Liability:** The consideration and covenants in the Settlement Agreement, this Release and associated documents are the sole consideration for full satisfaction of a disputed claim, and that neither the payment, promise, covenant, performance nor the negotiations for settlement shall be considered as an admission of liability by any party.

7. **Apportionment of Payment to Lienholders:** Each party shall apportion the monetary consideration here among all individuals, companies, agencies, insurers or agencies, political subdivisions, or attorneys who may have valid liens or rights of subrogation or reimbursement.

8. **No Additional Claims:** The parties represent to the others that no additional claims are contemplated against any other party potentially liable for the contract losses, damages, or events for which this Release is given. If any additional claim is made which directly or indirectly results in additional liability exposure to the non-pursuing party for the losses, damages, and events for which this Release is given, Plaintiff and Defendants, each to the other, shall indemnify and save the other party harmless from all such claims and demands, including reasonable attorney's fees and all other expenses necessarily incurred.

9. **Dismissal of Lawsuit With Prejudice:** The parties shall dismiss the Lawsuit with prejudice.
10. **Disclaimer:** Each party has carefully read this Release and has had the opportunity to discuss its legal effect with legal counsel. Each party understands this Release and signs it by its own free will.
11. **Entire Agreement and Modifications:** This Release constitutes the entire understanding between the parties for the contemplated transaction, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Release. Each party understands that if a term or condition is important to them, and it is not contained in this Release, then the term or condition is not enforceable against the other party. This Release may not be waived, modified, amended, discharged or terminated except in a document signed by all parties.
12. **Binding Effect:** This Release is binding upon the heirs, successors and assigns of each party.
13. **Applicable Law and Forum:** This Release shall be construed pursuant to Montana law. The proper forum for legal disputes shall be an appropriate Montana court.
14. **Time is of the Essence:** Time is of the essence in this Release.
15. **Attorney's Fees and Costs:** In the event of a dispute surrounding this Release, the prevailing party shall be entitled to its costs and reasonable attorney's fees, including fees to enforce this provision.
16. **Counterpart Signatures:** This Agreement may be executed in separate counterparts and email or facsimile copies bearing the signatures of a party shall be treated the same as an original signature.
17. **Date of Release:** The date of this Release shall be deemed to be the date of the last signature below.

-Signatures on Separate Pages for Ease of Signing-

CAUTION: READ CAREFULLY BEFORE SIGNING!

Plaintiff:

State of Montana, Department of Public Health and Human Services

By: Alex Meier
Name

Director, DPHHS
Title

111 N Sanders St, Helena, MT 59601
Address

406 444-5623
Phone Number

Date: March 16, 2021

CAUTION: READ CAREFULLY BEFORE SIGNING!

Defendants:

Griggs Ferndale LLC d/b/a Ferndale Market

By: _____

Jay Griggs
Jay Griggs, Authorized Member

1845 Montana Hwy 209, Bigfork, MT 59911

Date: _____

3/17/21

CAUTION: READ CAREFULLY BEFORE SIGNING!

130 Central LLC d/b/a Remington Bar & Casino

By:  _____

Dave Sheeran, Authorized Member
130 Central Avenue, Whitefish, MT 59937

Date:  _____

CAUTION: READ CAREFULLY BEFORE SIGNING!

Scotty's Bar & Steakhouse LLC d/b/a Scotty's Bar and Casino

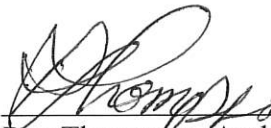
By: 

Karla Jo Levensgood, Authorized Member
2205 Hwy 93 South, Kalispell, MT 59903

Date: 3/16/21

CAUTION: READ CAREFULLY BEFORE SIGNING!

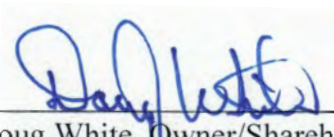
Sykes Diner LLC d/b/a Sykes Diner and Market

By: 
Ray Thompson, Authorized Member
P.O. Box 2294, Kalispell, MT 59903

Date: 03/15/2021

CAUTION: READ CAREFULLY BEFORE SIGNING!

White Enterprises Inc., Your Turn Mercantile/Your Lucky Turn Casino

By: 
Doug White, Owner/Shareholder
7505 Hwy 35, Bigfork, MT 59911

Date: 

1 Bruce A. Fredrickson
Angela M. LeDuc
2 Rocky Mountain Law Partners, P.C.
1830 3rd Avenue East, Suite 301
3 P. O. Box 1758
Kalispell, MT 59903-1758
4 Telephone: (406) 314-6011
Facsimile: (406) 314-6012
5 E-mail: bruce@rmtlawp.com
angie@rmtlawp.com
6 *Attorneys for Defendants, Griggs Ferndale, LLC*
Sykes Diner, LLC, White Enterprises, Inc., and
7 *Scotty's Bar & Steakhouse, LLC*

8 Duncan Scott
Scott & Kienzle, P.C.
9 1001 South Main Street
Kalispell, MT 59901
10 Telephone: (406) 752-1250
Facsimile: (406) 752-6001
11 E-Mail: Duncan@Dscottlaw.com
Co-Counsel for Defendant, Sykes Diner, LLC

12 MONTANA ELEVENTH JUDICIAL DISTRICT COURT, FLATHEAD COUNTY
13

14 DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES,
15 Plaintiff and Counterclaim Defendant,

16 vs.

17 GRIGGS FERNDAL, LLC, d/b/a
FERNDAL MARKET,
18 Defendant and Counterclaim Plaintiff.

19 DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES,
20 Plaintiff and Counterclaim Defendant,

21 vs.

22 SYKES DINER LLC d/b/a SYKES DINER
AND MARKET,
23 Defendant and Counterclaim Plaintiff.

Judge: Robert B. Allison

Consolidated Actions:

Cause Nos:

DV-15-2020-0000963(C),

(Griggs Ferndale)

DV-15-2020-0000964(C),

(Sykes Diner)

DV-15-2020-0000966(B),

(White Enterprises)

DV-15-2020-0000971(B),

(Scotty's Bar & Steakhouse)

Consolidated In and With:

DV-15-2020-0000965-IJ

(130 Central/Remington)

**ALL PARTIES' STIPULATION TO
DISMISS WITH PREJUDICE**

1 DEPARTMENT OF PUBLIC HEALTH
2 AND HUMAN SERVICES,
Plaintiff and Counterclaim Defendant,

3 vs.

4 WHITE ENTERPRISES, INC., d/b/a YOUR
5 TURN MERCANTILE/YOUR LUCKY
TURN CASINO,
6 Defendant and Counterclaim Plaintiff.

7 DEPARTMENT OF PUBLIC HEALTH
8 AND HUMAN SERVICES,
Plaintiff and Counterclaim Defendant,

9 vs.

10 SCOTTY'S BAR & STEAKHOUSE, LLC,
d/b/a SCOTTY'S BAR AND CASINO,
11 Defendant and Counterclaim Plaintiff.

12 DEPARTMENT OF PUBLIC HEALTH
13 AND HUMAN SERVICES,
Plaintiff and Counterclaim Defendant,

14 vs.

15 130 Central, LLC, d/b/a REMINGTON BAR
& CASINO,
16 Defendant and Counterclaim Plaintiff.

17 IT IS HEREBY STIPULATED, by and between all the parties hereto, through their
18 respective counsel of record, that the above-entitled action has been fully and finally
19 compromised and settled upon the merits, and said counsel for all parties do hereby move the
20 Court for its Order dismissing the above-entitled action with prejudice.

21
22
23 ////
24

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

DATED this ____ day of March, 2021.

BOONE KARLBERG P.C. ROCKY MOUNTAIN LAW PARTNERS, P.C.

By: /S/ Randy J. Cox By: /S/ Bruce A. Fredrickson
Randy J. Cox, Attorney Bruce A. Fredrickson, Attorney
Attorneys for Defendants, Griggs Ferndale, LLC
Sykes Diner, LLC, White Enterprises, Inc., and
Scotty's Bar & Steakhouse, LLC

STATE OF MONTANA,
DEPARTMENT OF HEALTH &
HUMAN SERVICES
By: /S/ Nicholas Domitrovich By: /S/ Duncan Scott
Nicholas Domitrovich, Special Duncan Scott, Attorney
Assistant Attorney General *Co-Counsel for Defendant Sykes Diner, LLC,*

Attorneys for Plaintiff/Counterclaim By: /S/ Connor Walker
Defendant Department of Public Connor Walker, Attorney
Health and Human Services
Attorney for 130 Central, LLC d/b/a Remington
Bar & Casino