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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JESUS VARGAS-FLORES, an individual
and on behalf of all others similarly
situated,

Plaintiff,

v.

HARBOR BAY CLUB, INC., a California
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21CV002396

[Assigned for all purposes to the Hon. Brad
Seligman in Dept. 23]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION, PAGA, AND
REPRESENTATIVE ACTION
SETTLEMENT**

Action Filed: November 10, 2021
Trial Date: None set

This Joint Stipulation re: Class Action and Representative Action Settlement
("Settlement" or "Agreement" or "Settlement Agreement") is made by and between plaintiff
JESUS VARGAS-FLORES ("Plaintiff") individually and on behalf of the Settlement Class, on
the one hand; and defendant HARBOR BAY CLUB, INC. (collectively "Defendant"), on the
other hand, in the lawsuit entitled *Vargas v. Harbor Bay Club, et al.*, filed in Alameda County
Superior Court, Case No. 21CV002396 (the "Action"). Plaintiff and Defendant shall be, at

times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

A. “Action” means *Vargas v. Harbor Bay Club Inc, et al.*, filed in Alameda County Superior Court, Case No. 21CV002396.

B. “Aggrieved Employees” means those Settlement Class Members that worked for Defendant during the PAGA Period.

C. “Class Counsel” means: David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the term “Plaintiff’s Counsel.”

D. “Class Period” means the period from November 9, 2017 through December 9, 2022.

E. “Class Notice” means and refers to the notice sent to Class Members after preliminary approval of the Settlement in the manner described in Paragraph 9(A) of this Agreement.

F. “Court” means the Superior Court of the State of California for the County of Alameda.

G. “Final Approval Date” means the later of: (1) the date the Court signs an Order granting final approval of this Settlement (“Final Approval”) and Judgment; (2) if there is an objector, 60 days from the date of the Final Approval and Judgment; or (3) to the extent any appeals have been filed, the date on which they have been resolved or exhausted.

H. “Defendant” means Harbor Bay Club, Inc.

I. “Employer Taxes” means employer-funded taxes imposed on the wage portions of the Individual Settlement Payments under the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

1 **J. “General Release”** means the broader release of claims by Plaintiff, which is in
2 addition to Plaintiff’s limited release of claims as a Participating Class Member and Aggrieved
3 Employee.

4 **K. “Gross Settlement Amount”** means a non-reversionary fund in the lump sum of
5 Nine Hundred Twenty-Five Thousand Dollars and Zero Cents (\$925,000.00),¹ which shall be
6 paid by Defendant, from which all payments for the Individual Settlement Payments to
7 Participating Class Members, the Court-approved amounts for attorneys’ fees and reimbursement
8 of litigation costs and expenses to Class Counsel, Settlement Administration Costs, the Service
9 Award, Individual PAGA Payments, and the LWDA Payment shall be paid. It expressly
10 excludes Employer Taxes, which shall be paid by Defendant separate, apart, and in addition to
11 the Gross Settlement Amount. Defendant will not have to pay any amount above the lump sum
12 listed in this paragraph K, other than Employer Taxes.

13 **L. “Individual PAGA Payment”** means a payment made to an Aggrieved
14 Employee for his or her share of the PAGA Payment, which may be in addition to his or her
15 Individual Settlement Share if he or she is also a Participating Class Member.

16 **M. “Individual Settlement Payment”** means a payment to a Participating Class
17 Member of his or her net share of the Net Settlement Amount.

18 **N. “Individual Settlement Share”** means the gross amount of the Net Settlement
19 Amount that a Participating Class Member is projected to receive based on the number of
20 Workweeks that he or she worked as a Settlement Class Member during the Class Period, which
21 shall be reflected in his or her Class Notice.

22 **O. “LWDA Payment”** means the payment to the State of California Labor and
23 Workforce Development Agency (“LWDA”) for its seventy-five percent (75%) share of the total
24 amount allocated toward penalties under the PAGA all of which is to be paid from the Gross
25 Settlement Amount. The Parties have agreed that Forty Thousand Dollars and Zero Cents
26 (\$40,000.00) shall be allocated toward PAGA penalties, of which Thirty Thousand Dollars and
27 Zero Cents (\$30,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and Ten Thousand
28

¹ The Gross Settlement Amount can only be increased in accordance with Paragraph 17, below.

Five Hundred Dollars and Zero Cents (\$10,000.00) will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for Defendant in California in the PAGA Period (*i.e.* the PAGA Payment).

P. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to the Participating Class Members after deductions for the Court-approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA Payment, the PAGA Payment, and Individual PAGA Payments.

Q. “Operative Complaint” or “Complaint” means the First Amended Complaint to be filed with the Court.

R. “PAGA Payment is the 25% portion of the Forty Thousand Dollars and Zero Cents (\$40,000.00) that is allocated toward PAGA penalties (Ten Thousand Dollars and Zero Cents (\$10,000.00)) that will be paid to Aggrieved Employees on a *pro rata* basis based on the Workweeks worked for Defendant as non-exempt employees in California in the PAGA Period, which would be in addition to their Individual Settlement Payment if they are Participating Class Members, as well.

S. “PAGA Period” means the period from November 1, 2020 through the end of the Class Period.

T. “Participating Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion.

U. “Participating Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Settlement Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

V. “Plaintiff”, “Named Plaintiff” or “Class Representative” shall refer to Plaintiff Jesus Vargas-Flores.

1 **W. “Preliminary Approval Date”** means the date on which the Court enters an
2 Order granting preliminary approval of the Settlement.

3 **X. “Released Parties”** shall mean Defendant and each of its past, present, and future
4 respective subsidiaries, dba’s, affiliates, sister companies, parent companies, holding companies,
5 management companies, limited liability companies, insurers, reinsurers, sureties, and company-
6 sponsored employee benefit plans of any nature and their successors and predecessors in interest,
7 including all of the aforementioned entities’ officers, directors, shareholders, exempt employees,
8 agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys,
9 administrators, fiduciaries, trustees, and agents.

10 **Y. “Response Deadline”** means the deadline for Settlement Class Members to mail
11 any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator,
12 which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English
13 and Spanish by the Settlement Administrator, unless a Class Member’s notice is re-mailed. In
14 such an instance, the Response Deadline shall be fifteen (15) calendar days from the re-mailing,
15 or forty-five (45) calendar days from the date of the initial mailing, whichever is later, in which
16 to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark
17 shall be the exclusive means for determining whether a Request for Exclusion, Objection, or
18 Workweek Dispute was submitted by the Response Deadline.

19 **Z. “Request for Exclusion”** means a written request to be excluded from the
20 Settlement Class pursuant to Paragraph 9(C) below.

21 **AA. “Service Award”** means monetary amounts to be paid to Plaintiff of up to Seven
22 Thousand, Five Hundred Dollars and Zero Cents (\$7,500.00), which subject to Court approval,
23 will be paid out of the Gross Settlement Amount.

24 **BB. “Settlement Administration Costs”** means all costs incurred by the Settlement
25 Administrator in administration of the Settlement, including, but not limited to, translating the
26 Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English
27 and Spanish, calculating Individual Settlement Shares, Individual Settlement Payments,
28 Individual PAGA Payments, and Participating Individual Settlement Shares, as well as associated

1 taxes and withholdings, providing declarations, generating Individual Settlement Payment
2 checks and related tax reporting forms, doing administrative work related to unclaimed checks,
3 transmitting payment to Class Counsel for the Court-approved amounts for attorneys' fees and
4 reimbursement of litigation costs and expenses, to Plaintiffs for their Service Award, and to the
5 LWDA for the LWDA Payment, providing weekly reports of opt-outs, objections and related
6 information, and any other actions of the Settlement Administrator as set forth in this Agreement,
7 all pursuant to the terms of this Agreement. The Settlement Administration Costs are estimated
8 not to exceed \$9,550.00. If the actual amount of the Settlement Administration Costs is less than
9 \$9,550.00, the difference between \$9,550.00 and the actual Settlement Administration Costs
10 shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed
11 \$9,550.00 then such excess will be paid solely from the Gross Settlement Amount and Defendant
12 will not be responsible for paying any additional funds in order to pay these additional costs.

13 **CC. "Settlement Administrator"** means the Third-Party Administrator mutually
14 agreed upon by the Parties that will be responsible for the administration of the Settlement
15 including, without limitation, translating the Class Notice in Spanish, the distribution of the
16 Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount
17 and related matters under this Agreement.

18 **DD. "Settlement Class" or "Settlement Class Member(s)"** means all persons
19 currently or formerly employed by Defendant as non-exempt employees at any time during the
20 Class Period in the State of California.

21 **EE. "Workweeks"** means the estimated number of workweeks that a Settlement Class
22 Member was employed by and worked for the Defendant during the Class Period in California,
23 based on pay check data.

24 **2. BACKGROUND**

25 **A.** On November 1, 2021, Plaintiff filed with the LWDA and served on Defendant a
26 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
27 LWDA to recover civil penalties on behalf of Aggrieved Employees for various Labor Code
28 violations. ("PAGA Notice").

1 **B.** On November 10, 2021, Plaintiff filed a putative wage-and-hour class action
2 alleging that, during the Class Period, Defendant, as it pertains to Class Members: (1) failed to
3 pay overtime wages; (2) failed to pay minimum wages; (3) failed to provide meal periods or
4 compensation in lieu thereof; (4) failed to provide rest periods or compensation in lieu thereof;
5 (5) failed to all wages due upon separation from employment; (6) failed to issue accurate and
6 compliant wage statements; (7) failed to timely pay wages during employment; (8) failed to
7 reimburse for business expenses; and (9) engaged in unfair competition (the “Class Action”).

8 **C.** On January 5, 2022, after sixty-five (65) days had passed since Plaintiff filed and
9 served the PAGA Notice, without any action by the LWDA with respect to the alleged Labor
10 Code violations, Plaintiff filed a separate representative action seeking PAGA civil penalties
11 against Defendant for the Labor Code violations alleged in the PAGA Notice (the “PAGA
12 Action”).

13 **D.** Thereafter, the Parties agreed to exchange informal discovery and attend an early
14 mediation, in which Plaintiff was provided with, among other things: (1) a 25% sampling of time
15 and payroll records for the estimated 347 Class Members; (2) data points, including the total
16 number of Workweeks and pay periods worked by Class Members and Aggrieved Employees,
17 the number of Class Members eligible for wage statement violations and waiting time penalties,
18 the number of hours worked, the number of pay periods in the statutory time period for wage
19 statement violations and waiting time penalties, among others; (4) Defendant’s wage and hour
20 policy documents and employee handbooks in effect during the Class Period; and (5) Plaintiff’s
21 personnel records and employment files.

22 **E.** On October 10, 2022, the Parties participated in a full-day mediation before the
23 Hon. Carl West, a well-regarded mediator experienced in mediating complex labor and
24 employment matters. With the aid of the mediator’s evaluation, the Parties reached the
25 Settlement to resolve the Action. As part and parcel to the Settlement, the Parties agree to
26 stipulate to Plaintiff filing a First Amended Complaint in the Class Action, and dismiss the PAGA
27 Action without prejudice, thereby effectively consolidating the Class Action and PAGA Action,
28 as further set out below (hereinafter, the “Action”).

1 **F.** Class Counsel has conducted significant investigation of the law and facts relating
2 to the claims asserted in the Class Action, and the PAGA Notice, and have concluded that the
3 Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
4 Class, taking into account the sharply contested issues involved, the expense and time necessary
5 to litigate the Action through trial and any appeals, the risks and costs of further litigation of the
6 Action, the risk of an adverse outcome, the uncertainties of complex litigation, the information
7 learned through informal discovery regarding Plaintiff's allegations, and the substantial benefits
8 to be received by Settlement Class Members.

9 **G.** Defendant has concluded that, because of the substantial expense of defending
10 against the Action, the length of time necessary to resolve the issues presented herein, the
11 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
12 interest to accept the terms of this Agreement. Defendant denies each of the allegations and
13 claims asserted against it in the Action and the PAGA Notice. However, Defendant nevertheless
14 desires to settle the Action for the purpose of avoiding the burden, expense and uncertainty of
15 continuing litigation and for the purpose of putting to rest the controversies engendered by the
16 Action.

17 **H.** This Agreement is intended to and does effectuate the full, final, and complete
18 resolution of all Class Released Claims of Plaintiff and Participating Class Members, and all
19 PAGA Released Claims of Plaintiffs and, to the extent permitted by law, of the State of California
20 and Aggrieved Employees.

21 **3. JURISDICTION**

22 The Court has jurisdiction over the Parties and the subject matter of the Action. The
23 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
24 applicable statutes. After the Court has granted Final Approval of the Settlement and entered
25 judgment, the Court shall retain jurisdiction over the Parties to enforce the terms of the judgment
26 pursuant to California Rule of Court, rule 3.769, subdivision (h).

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1 **4. STIPULATION OF CLASS CERTIFICATION**

2 The Parties stipulate to the certification of the Settlement Class under this Agreement for
3 purposes of settlement only. Nothing in this Stipulation will be construed as an admission or
4 acknowledgment of any kind by Defendant that any class should be certified or given collective
5 treatment in the Action or in any other action or proceeding.

6 **5. AMENDMENT OF PLEADING AND MOTIONS FOR APPROVAL OF**
7 **SETTLEMENT**

8 The Parties hereby agree to stipulate to the filing of a First Amended Complaint in the
9 Class Action that includes all of the allegations in the PAGA Action. If and when the First
10 Amended Complaint is filed, Plaintiff will dismiss the PAGA Action without prejudice, thereby
11 effectively consolidating all allegations in the PAGA Action into the Class Action.

12 After full execution of this Agreement, Plaintiff will move for an order granting
13 preliminary approval of the Settlement, approving and directing the mailing of the proposed
14 Notice of Class Action Settlement (“Class Notice”) attached hereto as **Exhibit “A”**, conditionally
15 certifying the Settlement Class for settlement purposes only, and approving the deadlines
16 proposed by the Parties for the submission of Requests for Exclusion, Workweek Disputes, and
17 Objections. If and when the Court preliminarily approves the Settlement, and after
18 administration of the Class Notice in a manner consistent with the Court’s Preliminary Approval
19 Order, Plaintiffs will move for an order finally approving the Settlement and seek entry of a
20 Judgment consistent with this Settlement. The Parties may both respond to any Objections
21 lodged to final approval of the Settlement up to five (5) court days before the Final Approval
22 Hearing.

23 The Parties hereby expressly agree that whether or not the Court finally approves the
24 Settlement, Plaintiff’s allegations from the PAGA Action will be effectively consolidated into
25 the Class Action, will relate back to the date on which Plaintiff filed the PAGA Notice, and
26 Defendant will be estopped from making any argument that there is any adverse effect on the
27 statute of limitations caused by Plaintiff’s dismissal of the PAGA Action without prejudice to
28 effectuate this consolidation.

1 **6. STATEMENT OF NO ADMISSION**

2 Defendant denies any wrongdoing of any sort and further deny any liability to Plaintiff
3 and the Settlement Class with respect to any claims or allegations asserted in the Action and the
4 PAGA Notice. This Agreement shall not be deemed an admission by Defendant of any claims
5 or allegations asserted in the Action or the PAGA Notice. Except as set forth elsewhere herein,
6 in the event that this Agreement is not approved by the Court, or any appellate court, is
7 terminated, or otherwise fails to be enforceable, Plaintiff will not be deemed to have waived,
8 limited or affected in any way any claims, rights or remedies, or defenses in the Action or the
9 PAGA Notice, and Defendant will not be deemed to have waived, limited, or affected in any way
10 any of their objections or defenses in the Action and the PAGA Notice. The Parties shall be
11 restored to their respective positions in the Action prior to the entry of this Settlement.

12 **7. RELEASE OF CLAIMS**

13 **A. Release by All Participating Class Members.**

14 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
15 of Judgment, and payment by Defendant to the Settlement Administrator of the full Gross
16 Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, Plaintiff and
17 all Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns release,
19 discharge and hold harmless the Released Parties for and from all claims against the Released
20 Parties asserted in the Operative Complaint filed in the Action, and any and all claims that may
21 be asserted against the Released Parties based on the factual allegations in the Operative
22 Complaint, as follows: For the duration of the Class Period, the release includes, for Participating
23 Class Members, but is not limited to: (1) all claims for failure to pay overtime wages; (2) all
24 claims for failure to pay minimum wages; (3) all claims for failure to provide meal periods or
25 compensation in lieu thereof; (4) all claims for failure to provide rest periods or compensation in
26 lieu thereof; (5) all claims for failure to pay all wages due upon separation from employment; (6)
27 all claims for failure to issue accurate and compliant wage statements; (7) all claims for failure
28 to timely pay wages during employment; (8) all claims for failure to reimburse for business

1 expenses; and (9) all claims asserted through California Business & Professions Code section
2 17200, *et seq.* arising out of the Labor Code violations referenced in the Complaint (the “Class
3 Released Claims”).

4 **B. Release by All Aggrieved Employees**

5 Aggrieved Employees on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, and to the extent
7 permitted by law the State of California, release, discharge and hold harmless all claims asserted
8 against the Defendant and the Released Parties for the entire PAGA Period for PAGA civil
9 penalties, all claims asserted in the PAGA Notice and thereafter alleged in the Operative
10 Complaint for PAGA civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5,
11 1197.1, and 2699 in connection with alleged violations of Labor Code sections 96, 98.6, 200,
12 201, 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 1102.5, 1174,
13 1194, 1194.2, 1197, 1197.5, 1198.5, 2699, 2802, 2810.5, Labor Code Sections 201.3, 221, 223,
14 404, 1182.12, 6401, 6402, 6403, 6409.6; Cal. Code Regs, title 8, section 110404(5)(A); Business
15 and Professions Code sections 17200, 16600 and 16700, and any claims that could have been
16 alleged based on the factual allegations in the Operative Complaint in this action for the PAGA
17 Period (the “PAGA Released Claims”). The Class Released Claims and PAGA Released Claims
18 shall be referred to herein as the “Released Claims”. After the Court’s judgment is final, and
19 Defendant has paid the Gross Settlement Amount (and separately paid the employer-side payroll
20 taxes), all Aggrieved Employees will be barred from asserting the PAGA Released Claims
21 against Defendant, whether or not they exclude themselves from the Settlement. This means that
22 all Aggrieved Employees, including those who are Participating Class Members and those who
23 opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA
24 Released Claims against Defendant and Released Parties, or its related entities.

25 **C. Claims Not Released**

26 The releases above expressly exclude claims for vested benefits, unemployment
27 insurance, disability, social security, workers’ compensation, and any other claims outside of the
28 Class Released Claims of Participating Class Members arising during the Class Period and the

1 PAGA Released Claims of Aggrieved Employees (and, to the extent permitted by law, the State
2 of California) arising outside of the PAGA Period.

3 **D. General Release.**

4 Effective only upon the entry of an Order granting Final Approval of the Settlement, entry
5 of Judgment, and payment by Defendant to the Settlement Administrator selected of the full
6 Gross Settlement Amount and Employers' Taxes necessary to effectuate the Settlement, in
7 addition to the Released Claims, Plaintiff makes the additional following General Release:
8 Plaintiff releases, discharges and holds harmless the Released Parties from all claims, demands,
9 rights, liabilities and causes of action of every nature and description whatsoever, known or
10 unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of
11 any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with
12 any act or omission of the Released Parties through the date of full execution of this Agreement
13 in connection with Plaintiff's employment with Defendant or the termination thereof, except for
14 any and all other claims that may not be released as a matter of law through this Agreement. To
15 the extent of the General Release provided herein, Plaintiff stipulates and agrees that, upon entry
16 of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by
17 Defendant to the Settlement Administrator selected of the full Gross Settlement Amount and
18 Employers' Taxes necessary to effectuate the Settlement, she shall have expressly waived and
19 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section
20 1542 of the California Civil Code, or any other similar provision under federal or state law, which
21 provides:

22 A general release does not extend to claims that the creditor or
23 releasing party does not know or suspect to exist in his or her
24 favor at the time of executing the release and that, if known by
him or her, would have materially affected his or her settlement
with the debtor or released party.

25 **8. SETTLEMENT ADMINISTRATOR**

26 **A.** Plaintiff and Defendant, through their respective counsel, have selected ILYM
27 Group, Inc ("ILYM") to administer the Settlement, which includes but is not limited to translating
28 the Class Notice to Spanish, distributing and responding to inquiries about the Class Notice and

calculating all amounts to be paid from the Gross Settlement Amount. Charges and expenses of the Settlement Administrator, currently estimated to be \$9,550.00 will be paid from the Gross Settlement Amount. If the actual amount of the Settlement Administration Costs is less than \$9,550.00, the difference between \$9,550.00 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$9,550.00, then such excess will be paid solely from the Gross Settlement Amount and Defendant will not be responsible for paying any additional funds in order to pay these additional costs.

9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION
PROCESS

A. Notice to the Settlement Class Members

(1) Within ten (10) calendar days after the Preliminary Approval Date, Defendant's Counsel shall provide to, based on the information available, the Settlement Administrator information with respect to each Settlement Class Member, including his or her: (1) name; (2) last known address(es) currently in Defendant's possession, custody, or control; (3) last known telephone number(s) currently in Defendant's possession, custody, or control; (4) last known Social Security Number(s) in Defendant's possession, custody, or control; and (5) pay data, which shall be made available to Class Counsel upon request for the purpose of effectuating the Settlement. For Number (5) above, Defendant can provide either pay period data or pay check data. The Settlement Administrator shall perform an address search using the United States Postal Service National Change of Address ("NCOA") database and update the addresses contained on the Class List with the newly-found addresses, if any. Within seven (7) calendar days, or soon thereafter, of receiving the Class List from Defendant, the Settlement Administrator shall mail the Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S. Mail using the most current mailing address information available. The Settlement Administrator shall maintain the Class List and digital copies of all the Settlement Administrator's records evidencing the giving of notice to any Settlement Class Member, for at least four (4) years from the Final Approval Date.

(2) The Class Notice will set forth:

- 1 (a) the Settlement Class Member's estimated Individual
2 Settlement Payment and Individual PAGA Payment,
3 and the basis for each;
- 4 (b) the information required by California Rule of Court,
5 rule 3.766, subdivision (d);
- 6 (c) the material terms of the Settlement;
- 7 (d) the proposed Settlement Administration Costs;
- 8 (e) the definition of the Settlement Class;
- 9 (f) a statement that the Court has preliminarily approved
10 the Settlement;
- 11 (g) how the Settlement Class Member can obtain
12 additional information, including contact information
13 for Class Counsel;
- 14 (h) information regarding opt-out and objection
15 procedures;
- 16 (i) the date and location of the Final Approval Hearing;
17 and
- 18 (j) that the Settlement Class Member must notify the
19 Settlement Administrator no later than the Response
20 Deadline if the Settlement Class Member disputes the
21 accuracy of the number of Workweeks as set forth on
22 his or her Class Notice ("Workweek Dispute"). If a
23 Settlement Class Member fails to timely dispute the
24 number of Workweeks attributed to him or her in
25 conformity with the instructions in the Class Notice,
26 then he or she shall be deemed to have waived any
27 objection to its accuracy and any claim to any
28 additional settlement payment based on different data.

1 (3) If a Class Notice from the initial notice mailing is returned as
2 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
3 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
4 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
5 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
6 is successful in obtaining a new address, it will re-mail the Class Notice to the Settlement Class
7 Member within three (3) calendar days. Further, any Class Notices that are returned to the
8 Settlement Administrator with a forwarding address before the Response Deadline shall be
9 promptly re-mailed to the forwarding address affixed thereto.

10 (4) No later than seven (7) calendar days from the Response Deadline, the
11 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
12 completion of the notice process, including the number of attempts to obtain valid mailing
13 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
14 and copies of all Requests for Exclusion and Objections received by the Settlement
15 Administrator.

16 **B. Objections.**

17 Only Participating Class Members may object to the Settlement. In order for any
18 Settlement Class Member to object to this Settlement in writing, or any term of it, he or she must
19 do so by mailing a written objection to the Settlement Administrator at the address or phone
20 number provided on the Class Notice no later than the Response Deadline. The Settlement
21 Administrator shall email a copy of the Objection forthwith to Class Counsel and Defendant's
22 counsel and attach copies of all Objections to the Declaration it provides Class Counsel, which
23 Class Counsel shall file in support of Plaintiff's Motion for Final Approval. The Objection
24 should set forth in writing: (1) the Objector's name; (2) the Objector's address; (3) the last four
25 digits of the Objector's Social Security Number; (4) the Objector's signature; (5) a statement of
26 whether the Objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
27 Objection, along with whatever legal authority, if any, the Objector asserts in support of the
28 Objection. If a Settlement Class Member objects to the Settlement, the Settlement Class Member

1 will remain a member of the Settlement Class and if the Court approves this Agreement, the
2 Settlement Class Member will be bound by the terms of the Settlement in the same way and to
3 the same extent as a Settlement Class Member who does not object. The date of mailing of the
4 Class Notice to the objecting Settlement Class Member shall be conclusively determined
5 according to the records of the Settlement Administrator. Settlement Class Members need not
6 object in writing to be heard at the Final Approval Hearing; they may object or comment in
7 person at the hearing at their own expense. Class Counsel and Defendant's Counsel may respond
8 to any objection lodged with the Court up to five (5) court days before the Final Approval
9 Hearing.

10 **C. Requesting Exclusion.**

11 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
12 Settlement by mailing a written request to be excluded from the Settlement ("Request for
13 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
14 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
15 Member's Social Security Number; (3) the Class Member's signature; and (4) the following
16 statement: "Please exclude me from the Settlement Class in the *Vargas-Flores v. Harbor Bay*
17 *Club, Inc.* matter" or any statement of similar meaning standing for the proposition that the Class
18 Member does not wish to participate in the Settlement. The Settlement Administrator shall
19 immediately provide copies of all Requests for Exclusion to Class Counsel and Defendant's
20 Counsel and shall report the Requests for Exclusions that it receives, to the Court, in its
21 declaration to be provided in advance of the Final Approval Hearing. Any Settlement Class
22 Member who requests exclusion using this procedure will not be entitled to receive any payment
23 from the Settlement and will not be bound by the Settlement Agreement or have any right to
24 object to, appeal, or comment on the Settlement. Any Settlement Class Member who does not
25 opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
26 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
27 Judgment that may be entered by the Court if Final Approval of the Settlement is granted. A
28 Settlement Class Member cannot submit both a Request for Exclusion and an objection. If a

1 Settlement Class Member submits an Objection and a Request for Exclusion, the Request for
2 Exclusion will control and the Objection will be overruled. Settlement Class Members who
3 worked during the PAGA Period as Aggrieved Employees that submit a valid Request for
4 Exclusion will still be deemed Aggrieved Employees, will still receive their Individual PAGA
5 Payments, and will be bound by the release of the PAGA Released Claims.

6 **D. Disputes Regarding Settlement Class Members' Workweek Data.**

7 Each Settlement Class Member may dispute the number of Workweeks attributed to him
8 or her on his or her Class Notice ("Workweek Dispute"). Any such disputes must be mailed to
9 the Settlement Administrator by the Settlement Class Member, postmarked on or before the
10 Response Deadline. The Settlement Administrator shall immediately provide copies of all
11 disputes to Class Counsel and counsel for Defendant and shall immediately attempt to resolve all
12 such disputes directly with relevant Settlement Class Member(s) with the assistance of Defendant
13 and Class Counsel. If the dispute cannot be resolved in this manner, the Court shall adjudicate the
14 dispute.

15 **10. INDIVIDUAL SETTLEMENT PAYMENTS AND INDIVIDUAL**
16 **PAGA PAYMENTS**

17 Individual Settlement Payments will be calculated and distributed to Participating Class
18 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
19 Members' respective number of Workweeks during the Class Period. Individual PAGA
20 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
21 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
22 number of Workweeks during the PAGA Period. Specific calculations of the Individual
23 Settlement Shares and Individual PAGA Payments to Aggrieved Employees will be made as
24 follows:

25 **A.** The Settlement Administrator will determine number of Workweeks
26 worked by each Settlement Class Member during the Class Period ("Class Member's
27 Workweeks"), as well as the aggregate number of Workweeks worked by all Settlement Class
28 Members during the Class Period ("Class Workweeks"), from pay periods or pay check data

provided by Defendant's counsel. Additionally, the Settlement Administrator will determine the total number of Workweeks worked by each Aggrieved Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period ("PAGA Workweeks"), from pay periods or pay check data provided by Defendant's counsel.

B. To determine each Settlement Class Member's Individual Settlement Share, the Settlement Administrator will use the following formula: Individual Settlement Share = (Settlement Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

C. To determine each Participating Class Member's Participating Individual Settlement Share, the Settlement Administrator will determine the aggregate number of Workweeks worked by all Participating Class Members during the Class Period ("Participating Class Workweeks") and use the following formula: Individual Settlement Share = (Participating Class Member's Workweeks ÷ Participating Class Workweeks) × Net Settlement Amount.

D. The net amount of the Participating Individual Settlement Share is to be paid out to Participating Class Members by way of check and is referred to as "Individual Settlement Payment(s)".

E. To determine each Aggrieved Employee's Individual PAGA Payment, the Settlement Administrator will use the following formula: Aggrieved Employee's Individual PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x \$10,000.00 (the PAGA Payment).

F. Individual Settlement Payments and Individual PAGA Payments shall be paid to Participating Class Members and/or Aggrieved Employees by way of check. When a Participating Class Member is also an Aggrieved Employee, one check may be issued that aggregates both the Individual Settlement Payment and the Individual PAGA Payment

11. DISTRIBUTION OF PAYMENTS

A. Distribution of Individual Settlement Payments.

1 Participating Class Members will receive an Individual Settlement Payment and
2 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
3 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
4 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
5 calendar days after expiration of the 180-day period, checks for such payments shall be
6 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
7 abandoned cash residue pursuant to Code of Civil Procedure section 384 (“Unpaid
8 Residue”). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
9 Procedure section 384, shall be transmitted to Legal Aid at Work 180 Montgomery Street, Suite
10 600, San Francisco, California 94104, the *cy pres* recipient, for use in Alameda County. The
11 Settlement Administrator shall prepare a report regarding the distribution plan pursuant to Code
12 of Civil Procedure section 384 and the report shall be presented to the Court by Class Counsel
13 along with a proposed amended judgment that is consistent with the provisions of Code of Civil
14 Procedure section 384.

15 **B. Funding of Settlement.**

16 Defendant shall, within twenty one (21) calendar days of Final Approval Date, make
17 payment of the Gross Settlement Amount (as the same may be escalated pursuant to Paragraph
18 17 of this Agreement) and Employer Taxes to the Settlement Administrator pursuant to Internal
19 Revenue Code section 1.468B-1 for deposit in an interest-bearing qualified settlement account
20 (“QSA”) with an FDIC insured banking institution, for distribution in accordance with this
21 Agreement and the Court’s Orders and subject to the conditions described herein.

22 **C. Time for Distribution.**

23 Within seven (7) calendar days after payment of the full Gross Settlement Amount and
24 Employer Taxes by Defendant, or as soon thereafter as practicable, the Settlement Administrator
25 shall distribute all Payments due from the QSA for: (1) the Service Award to Plaintiff as specified
26 in this Agreement and approved by the Court; (2) the Attorneys’ Fees and Cost Award to be paid
27 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
28 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA

1 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
2 Payments as specified in this Agreement and approved by the Court. The balance remaining
3 shall constitute the Net Settlement Amount from which Individual Settlement Payments shall be
4 made to Participating Class Members, less applicable taxes and withholdings. All interest
5 accrued shall be for the benefit of the Class Members and distributed on a *pro rata* basis to
6 Participating Class Members based on the number of Workweeks worked by them in the Class
7 Period.

8 **12. ATTORNEYS' FEES AND LITIGATION COSTS**

9 Class Counsel shall apply for, and Defendant shall not oppose, an award of attorneys'
10 fees of up to 35% of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph
11 17 of this Agreement, amounts to Three Hundred and Twenty-Three Thousand Seven Hundred
12 and Fifty Dollars and Zero Cents (\$323,750.00). Class Counsel shall further apply for, and
13 Defendant shall not oppose, an application or motion by Class Counsel for reimbursement of
14 actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration
15 testimony in an amount up to Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
16 Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all
17 past and future attorneys' fees and costs necessary to prosecute, settle, and obtain Final Approval
18 of the settlement in Action. The "future" aspect of the amounts stated herein includes, without
19 limitation, all time and expenses expended by Class Counsel (including any appeals therein).
20 There will be no additional charge of any kind to either the Settlement Class Members or request
21 for additional consideration from Defendant for such work unless, Defendant materially breaches
22 this Agreement, including any term regarding funding, and further efforts are necessary from
23 Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce
24 the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in
25 amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall
26 be a part of the Net Settlement Amount.

27 **13. SERVICE AWARD TO PLAINTIFF**

28

1 Named Plaintiff shall seek, and Defendant shall not oppose, a Service Award in an
2 amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
3 Plaintiff, for participation in and assistance with the Action. Any Service Award awarded to
4 Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form
5 1099. If the Court approves the Service Award to Plaintiff in less than the amounts sought herein,
6 then the unapproved portion(s) shall be a part of the Net Settlement Amount.

7 **14. TAXATION AND ALLOCATION**

8 a. Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
9 be reported on an IRS Form W2); and 80% as penalties (to be reported on an IRS Form 1099).
10 Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties agree that
11 the employees' share of taxes and withholdings with respect to the wage-portion of the Individual
12 Settlement Share will be withheld from the Individual Settlement Share in order to yield the
13 Individual Settlement Payment. This withholding from the Individual Settlement Share shall not
14 increase the Gross Settlement Amount. The amount of federal income tax withholding will be
15 based upon a flat withholding rate for supplemental wage payments in accordance with Treasury
16 Regulation § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
17 be made pursuant to applicable state and/or local withholding codes or regulations.

18 b. Forms W-2 and/or Forms 1099 will be distributed by the Settlement
19 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
20 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
21 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
22 set forth in this Section may be modified in a manner to bring Defendant into compliance with
23 any such changes.

24 c. All Employer Taxes shall be paid by Defendant separate, apart, and in addition to
25 the Gross Settlement Amount. Defendant shall remain liable to pay the employer's share of
26 payroll taxes as described above.

27 d. Neither Counsel for Plaintiff nor Defendant intend anything contained in this
28 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement

1 be relied upon as such within the meaning of United States Treasury Department Circular 230
2 (31 C.F.R. Part 10, as amended) or otherwise.

3 **15. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

4 The Parties agree to allocate Forty Thousand Dollars and Zero Cents (\$40,000.00) of the
5 Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five percent
6 (75%) of the amount allocated toward PAGA (\$30,000.00) will be paid to the LWDA and twenty-
7 five percent (25%) (\$10,000.00) will be distributed to Aggrieved Employees on a *pro rata* basis
8 based upon their respective Workweeks worked as Aggrieved Employees during the PAGA
9 Period.

10 **16. COURT APPROVAL**

11 This Agreement is contingent upon an order by the Court granting Final Approval of the
12 Settlement, and that the LWDA does not intervene and object to the Settlement. In the event it
13 becomes impossible to secure approval of the Settlement by the Court and the LWDA, the Parties
14 shall be restored to their respective positions in the Action prior to entry of this Settlement. If
15 this Settlement Agreement is voided, not approved by the Court or approval is reversed on appeal,
16 it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a)
17 the Court reserves any authority to issue any appropriate orders when denying approval; and/or
18 (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive
19 the Settlement Agreement being voided or not approved, and which control in such an event.

20 **17. INCREASE IN WORKWEEKS**

21 Defendant represented that there are no more than 22,284 Workweeks worked during
22 the Class Period.. In the event that it is determined that the number of Workweeks worked by
23 Class Members during the Class Period increases by more than 10%, or 2,228 Workweeks,
24 then the Gross Settlement Amount shall be increased proportionally by the Workweeks in
25 excess of 24,512 Workweeks multiplied by the Workweek Value. The Workweek Value shall
26 be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$925,000.00)
27 by 22,284, which amounts to a Workweek Value of \$41.51. Thus, for example, should there
28

1 be 24,600 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased
2 by \$3,652.88. (24,600 Workweeks – 24,512 Workweeks) x \$41.51 per Workweek.).

3 **18. RIGHT TO RESCIND**

4 If more than ten percent (10%) of the Class Members elect to opt-out of the Settlement,
5 Defendant may, at its election, rescind the Settlement Agreement and all actions taken in
6 furtherance of it will be thereby null and void. Defendant must meet and confer with Class
7 Counsel prior to exercising this right and must make clear their intent to rescind the Agreement
8 within fourteen (14) calendar days after the expiration of the Opt-Out Deadline. If Defendant
9 elects to terminate the settlement, Defendant shall be responsible for any costs of
10 administration or notice incurred.

11 **19. NOTICE OF JUDGMENT**

12 In addition to any duties set out herein, the Settlement Administrator shall provide
13 notice of the Final Judgment entered in the Action by posting the same on its website for a
14 period of no less than four (4) years.

15 **20. MISCELLANEOUS PROVISIONS**

16 **A. Interpretation of the Agreement.**

17 This Agreement constitutes the entire agreement between the Parties with respect to its
18 subject matter. Except as expressly provided herein, this Agreement has not been executed in
19 reliance upon any other written or oral representations or terms, and no such extrinsic oral or
20 written representations or terms shall modify, vary or contradict its terms. In entering into this
21 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
22 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
23 enforced under the laws of the State of California, both in its procedural and substantive aspects,
24 without regard to its conflict of law provisions. Any claim arising out of or relating to the
25 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
26 Court of the State of California for the County of Alameda, and Plaintiff and Defendant hereby
27 consent to the personal jurisdiction of the Court in the Action over it solely in connection
28 therewith. The foregoing is only limited to disputes concerning this Agreement. The Parties,

1 and each of them, participated in the negotiation and drafting of this Agreement and had available
2 to them the advice and assistance of independent counsel. As such, neither Plaintiff nor
3 Defendant may claim that any ambiguity in this Agreement should be construed against the other.
4 The Agreement may be modified only by a writing signed by counsel for the Parties and approved
5 by the Court.

6 **B. Further Cooperation.**

7 The Parties and their respective attorneys shall proceed diligently to prepare and execute
8 all documents, to seek the necessary approvals from the Court, and to do all things reasonably
9 necessary to consummate the Settlement as expeditiously as possible. The Parties agree that they
10 will not take any action inconsistent with this Agreement, including, without limitation,
11 encouraging Class Members to opt out of the Settlement. In the event the Court finds that any
12 Party has taken actions inconsistent with the Settlement, including, without limitation,
13 encouraging Class Members to opt out of the Settlement, the Court may take any corrective
14 actions, including enjoining any Party from communicating regarding the Settlement on an *ex*
15 *parte* basis, issuing (a) corrective notice(s), awarding monetary, issue, evidentiary and/or
16 terminating sanctions against that Party, and/or enforcing this Agreement despite the presence of
17 opt-outs and/or objections.

18 **C. Counterparts.**

19 The Agreement may be executed in one or more actual or non-original counterparts, all
20 of which will be considered one and the same instrument and all of which will be considered
21 duplicate originals.

22 **D. Authority.**

23 Each individual signing below warrants that he or she has the authority to execute this
24 Agreement on behalf of the Party for whom or which that individual signs.

25 **E. No Third-Party Beneficiaries.**

26 Plaintiffs, Participating Class Members, Aggrieved Employees, the State of California,
27 Class Counsel, and Defendant are direct beneficiaries of this Agreement, but there are no third-
28 party beneficiaries.

1 **F. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **G. Jurisdiction of the Court**

5 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
6 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
7 of this Settlement Agreement and all orders and judgments entered in connection therewith,
8 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
9 interpreting, implementing, and enforcing the settlement embodied in this Settlement
10 Agreement and all orders and judgments entered in connection therewith.

11 **H. Severability.**

12 In the event that one or more of the provisions contained in this Agreement shall for any
13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19 Dated: Oct 16, 2023, 2023


Jesus Vargas Flores (Oct 16, 2023 18:22 PDT)
Jesus Vargas-Flores
Plaintiff and Class Representative

20
21
22
23
24 Dated: _____, 2023

HARBOR BAY CLUB, INC.
Defendant

25 By: _____

26 Its: _____

27
28 ///
 ///

AGREED AS TO FORM:

Dated: October 17, 2023

Vedang J. Patel

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff JESUS VARGAS-
FLORES**

Dated: _____, 2023

ANDREW R. SHALAUTA
MELANIE Y. KIM
**Counsel for Defendant HARBOR BAY
CLUB, INC**

1 **F. Deadlines Falling on Weekends or Holidays.**

2 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
3 or legal holiday, that deadline shall be continued until the following business day.

4 **G. Jurisdiction of the Court**

5 Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
6 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms
7 of this Settlement Agreement and all orders and judgments entered in connection therewith,
8 and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of
9 interpreting, implementing, and enforcing the settlement embodied in this Settlement
10 Agreement and all orders and judgments entered in connection therewith.

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12 In the event that one or more of the provisions contained in this Agreement shall for any
13 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
14 unenforceability shall in no way effect any other provision if Defendant's Counsel and Class
15 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
16 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

17
18 **IT IS SO AGREED:**

19 Dated: _____, 2023

Jesus Vargas-Flores
Plaintiff and Class Representative

20
21
22
23
24 Dated: OCTOBER 12, 2023

HARBOR BAY CLUB, INC.
Defendant

25 By: [Signature]

26 Its: PRESIDENT

27
28 ///
 ///

AGREED AS TO FORM:

Dated: _____, 2023

DAVID D. BIBIYAN
VEDANG J. PATEL
**Counsel for Plaintiff JESUS VARGAS-
FLORES**

Dated: October 12, 2023, 2023



ANDREW R. SHALAUTA
MELANIE Y. KIM
**Counsel for Defendant HARBOR BAY
CLUB, INC**