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on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

VENICE MOSES, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

CVAC, INC. dba CARMEL VALLEY
ATHLETIC CLUB and CVAC and REFUGEE,
an Illinois corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 23CV001337

*Assigned for all purposes to:
Hon. Thomas W. Wills, Dept. 15*

**DECLARATION OF JOHN G. YSLAS IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: November 22, 2024
Time: 8:30 a.m.
Dept.: 15

1 I, John G. Yslas, hereby declare as follows:

2 1. I am an attorney at law licensed to practice before all of the courts of the State of
3 California. I am a senior partner at Wilshire Law Firm, PLC (“WLF”), counsel for Plaintiff Venice
4 Moses (“Plaintiff”) in this matter. I am thoroughly familiar with and have personal knowledge of
5 all of the facts set forth herein.

6 2. I submit this declaration in support of Plaintiff’s Motion for Preliminary Approval
7 of Class Action and PAGA Settlement.

8 **Procedural History**

9 3. On April 28, 2023, Plaintiff filed this action as a putative class action against
10 Defendant alleging: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime
11 wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5)
12 failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage
13 statements; (7) failure to indemnify employees for expenditures; and (8) unfair business practices,
14 Case No. 23CV001337 (“Operative Class Complaint”).

15 4. On April 14, 2024, Plaintiff provided written notice to the LWDA and Defendant
16 of his intention to file a PAGA claim. The LWDA did not notify Plaintiff that it intended to
17 investigate within 65 days of this written notice. *Id.* Therefore, on June 13, 2023, Plaintiff filed a
18 separate action alleging a claim under PAGA, Case No. 23CV001337 (the “Operative PAGA
19 Complaint”).

20 5. On September 24, 2024, the Court ordered the cases related and consolidated, and
21 designated Case No. 23CV001337 as the lead case.

22 6. The Parties subsequently participated in a private mediation with mediator Russ
23 Wunderli, Esq. on June 28, 2024. The negotiations were adversarial, conducted at arm’s length,
24 and tempered by the efforts of both sides to serve the interests of their clients. The mediator made
25 a proposal, which was accepted by both parties. The Parties did not reach an agreement to settle
26 that day. However, the Parties continued to negotiate in good faith following mediation and with
27 the help of Mr. Wunderli were able to reach an agreement on general settlement terms on August
28 2, 2024.

7. The parties negotiated the terms of the Settlement over the next several months, which was finalized on October 28, 2024. A true and correct copy of the fully executed Settlement Agreement is attached hereto as **Exhibit 1**. Attached thereto as **Exhibit A** is a true and correct copy of the Parties' proposed Class Notice.

8. On October 29, 2024, Plaintiff submitted a copy of the Settlement Agreement to the LWDA. A true and correct copy of the confirmation of submission my office received after submitting the Settlement Agreement to the LWDA is attached hereto as **Exhibit 2**.

Investigation and Exposure Analysis

9. Prior to attending mediation, Plaintiff's Counsel thoroughly investigated the claims, applicable law, and potential defenses. Plaintiff's Counsel assessed the value to the class claims using the documents and data Defendant produced in informal discovery, including class data providing the number of Class Members, the number of workweeks in the Class Period, and the number of pay periods in the PAGA Period, Plaintiff's personnel file, employment handbook and policies, job descriptions, and a random sampling of time and payroll records. Plaintiff's Counsel engaged an expert to quantify the potential exposure using the time and payroll records, and then assessed the risks associated with each claim meriting reductions in the likely success at class certification and likely recovery at trial.

10. Defendant's records show that there are approximately 485 Class Members, making joinder of all Class Members impracticable. Further, given the size and amount of each Class Members' claim, Class Members have little incentive to litigate their claims on an individual basis because the out-of-pocket expenses and personal commitment necessary to litigate each claim likely outweighs any potential recovery.

11. Plaintiff has alleged that Defendant maintained common employment policies and/or practices that unlawfully deprived Class Members of wages, meal period, rest periods, reimbursements for business expenses, accurate wage statements, and timely payment of wages upon separation of employment. These allegations present common factual and legal questions of, *inter alia*, whether Defendant applied the same scheduling, timekeeping, pay, meal period, rest period, and reimbursement policies to all Class Members, whether these policies and practices

1 resulted in Labor Code violations, whether Defendant's conduct was intention, and whether Class
2 Members are entitled to damages and/or penalties. These common questions could be resolved
3 using Class Members' time records, payroll records, testimony from Defendant's designated
4 representative(s), and Class Members' testimony.

5 12. Although the exposure Plaintiff's Counsel calculated is substantial, the various risks
6 at succeeding at class certification and through trial affected the valuation of the claims for
7 settlement purposes.

8 13. Minimum and Overtime Wages: Plaintiff's unpaid minimum and overtime wage
9 claims were based on the allegation that Defendant required Class Members to perform work duties
10 while off-the-clock. Based on Plaintiff's estimate that she worked a total of 1 hour off-the-clock
11 each week, Plaintiff's Counsel assumed each Class Member worked 1-hour off-the-clock per week
12 in calculating potential exposure to be approximately \$900,000.00 for these claims. However,
13 Defendant argued that any off-the-clock time was undocumented and unknown to Defendant, and
14 that Defendant was therefore not obligated to pay for this time. Because this claim would have
15 relied heavily on Class Member testimony and would not be evidenced in Defendant's time and
16 payroll records, the risk of succeeding at class certification was substantial. Accordingly,
17 Plaintiff's Counsel applied an 85% risk discount to this claim to reach a settlement value of
18 approximately \$135,000.00 (or 22.5% of the Gross Settlement Amount).

19 14. Meal Periods: Plaintiff's meal period claim was based on the allegation that
20 Defendant failed to maintain a policy and practice of paying meal period premiums when its time
21 records showed Class Members' meal periods were late, short, or missed. Plaintiff's Counsel found
22 a violation rate of nearly 42.8% in Defendant's time and payroll records and calculated potential
23 exposure on this claim to be approximately \$780,000.00. However, Defendant argued that Class
24 Members signed meal period waivers and on-duty meal period agreements. Accordingly,
25 Plaintiff's Counsel applied a 55% risk discount to reach a settlement value of approximately
26 \$351,000.00 (or 58% of the Gross Settlement Amount).

27 15. Rest Breaks: Plaintiff's meal period claim was based on the allegation that
28 Defendant maintained a policy that prohibited class members from leaving the premises. Plaintiff's

1 Counsel applied a 100% violation rate to all shifts over 3.5 hours and calculated a potential
2 exposure of \$2.7 million for this claim. However, Defendant argued that their policy was lawful
3 and Class Members were not restricted to the premises during rest breaks. Because this claim would
4 have relied exclusively on Class Member testimony, Plaintiff's Counsel applied a 97% risk
5 discount to this claim to reach a settlement value of approximately \$84,000.00 (or 14% of the Gross
6 Settlement Amount).

7 16. Reimbursements: Plaintiff's reimbursement claim was based on the allegation that
8 Defendant required Class Members to use their personal cellular phones for work related purposes.
9 Based on Plaintiff's estimate that she incurred \$30 in unreimbursed expenses per month, Plaintiff's
10 Counsel assumed each Class Member incurred \$30 in unreimbursed expenses per month in
11 calculating potential exposure to be approximately \$300,000.00 for this claim. However,
12 Defendant argued that these expenses were not required by Defendant, and that it could not have
13 known that these expenses were being incurred. Accordingly, Plaintiff's Counsel could not
14 attribute any value to this claim in terms of settlement value.

15 17. Derivative Penalties: Plaintiff alleged that as a result of Defendant's alleged failure
16 to pay all wages and meal and rest period premiums owed, Defendant owed waiting time penalties
17 and wage statement penalties. However, Defendant argued that it had good faith defenses that made
18 the imposition of these penalties unwarranted. Moreover, Plaintiff could not recover these penalties
19 if she failed to prove the underlying claims. Although Plaintiff's Counsel calculated that potential
20 exposure for the waiting time penalty claim was approximately \$1.2 million and approximately
21 \$748,000.00 for the wage statement penalty claim, Plaintiff's Counsel could not attribute any value
22 to this claim in terms of settlement value.

23 18. PAGA: For the PAGA claim, Plaintiff's Counsel determined that Defendant's
24 potential exposure could potentially reach \$288,000.00, assuming the initial \$100 penalty would
25 apply for each of the 2,880 pay periods in the PAGA Period. However, even assuming success on
26 the merits of each claim, PAGA gives the Court discretion to reduce penalties for a variety of
27 reasons, including where to do otherwise would result in an award that is unjust, arbitrary and
28

oppressive, or confiscatory. Therefore, the settlement allocates \$30,000.00 of the Gross Settlement Amount to PAGA, which amounts to approximately \$10 per pay period.

Plaintiff's Counsel's Qualifications

19. Plaintiff is represented by WLF. The attorneys at WLF performed significant work and expended litigation costs in prosecuting this matter with no guarantee of payment.

20. WLF was selected by Best Lawyers and U.S. News & World Report as one of the nation's Best Law Firms since 2020 and is comprised of more than 100 attorneys and over 600 employees. WLF is actively and continuously practicing in employment litigation, representing employees in both individual and class actions in both state and federal courts throughout California.

21. WLF is qualified to handle this Litigation because its attorneys are experienced in litigating Labor Code violations in both individual, class action, and representative action cases. WLF has handled, and is currently handling, numerous wage and hour class action lawsuits, as well as class actions involving consumer rights and data privacy litigation.

22. I graduated from the University of California, Santa Barbara with High Honors in 1991 with Bachelor of Arts degrees in Psychology. I received my Juris Doctor from UCLA Law School in 1996.

23. Upon graduating from law school in 1996, I worked for a boutique law firm practicing general litigation which included employment law matters. Since 2000 (that is, the last 23 years) my practice has been exclusively focused on labor and employment matters including handling wage and hour class, collective and representative actions (including the California Private Attorneys General Act, or "PAGA"), including in the international law firms of Morgan, Lewis & Bockius LLP (where I was a senior associate), Foley & Lardner LLP (where I was a partner and a national Vice Chair of the Labor and Employment Group), Norton Rose Fulbright LLP (where I was a partner) and Seyfarth Shaw (where I was a partner and member of the Wage and Hour Practice Group). During my time at these law firms, I was the primary attorney or took a major leading role in defending employers on numerous wage and hour class, collective and representative actions.

24. In late June 2022 I left Seyfarth Shaw and joined my current firm, The Wilshire Law Firm, PLC, to represent plaintiff employees. I have been and am handling many wage and hour class and representative actions litigating such matters on behalf of plaintiff employees in numerous Superior Courts and District Courts. From matters representing both plaintiffs and defendants, I have successfully mediated the resolution of many wage and hour class, collective, and representative actions. Just since starting to settle cases in late April 2023 I have already successfully mediated matters in which I have been counsel or co-counsel resulting in nearly \$65 million in settlements which are in the process of being finalized, and with numerous upcoming mediations scheduled. In those and numerous other matters, I have managed and assisted with the litigation and settlement of many wage and hour PAGA and class actions. In those actions, I performed similar tasks as those performed in the course of prosecuting this action.

25. I have received numerous awards for my legal work. For example, from 2015 to 2018, I was listed in Los Angeles Super Lawyers for Employment Litigation (Thomson Reuters). I have also served on numerous prominent boards and in other leadership positions, including currently serving as Southern California Regional President for the Hispanic National Bar Association and on the board of directors of the Mexican American Bar Foundation. I also previously served on the 5-member Los Angeles Civil Service Commission, which generally oversees the personnel decisions for the City of Angeles.

26. I have also published numerous blogs on labor and employment issues including on wage and hour issues. For example, I published “Headline News: Wal-Mart v. Dukes-Impact on Class Action Litigation” (while a partner with Foley & Lardner LLP) and “Are You Really Protected From Wage-and-Hour Successor Liability in an Asset Purchase” (while a partner with Seyfarth Shaw LLP). I have also been a presenter at numerous conferences, including being a presenter involving the “Employment Law Update” at a National Employment Law Council conference.

27. Samantha A. Smith is a Senior Attorney at WLF where her practice is focused on managing wage and hour class action and PAGA settlements. Ms. Smith was admitted to the California Bar in December of 2004, and received a J.D. from University of California, Hastings

College of the Law and a B.A. from University of California, Davis. Ms. Smith has dedicated her 20-year career to plaintiffs'-side class action litigation. Her wealth of experience includes successful work on all stages of class action litigation, including class action appeals, class certification motions, and class settlements. See, e.g., *Blue Diamond Growers Product Labeling Cases*, JCCP No. 4822 (Los Angeles County Superior Court) (false advertising of Blue Diamond food products); *Adam vs. eHealth, Inc.*, Case No. 17CV309050 (Santa Clara Superior Court) (employee data breach); *Overton v. Armour-Eckrich Meats, LLC*, Case No. CIVDS1501325 (San Bernardino County Superior Court) (unpaid wages, meal period and rest break claims, and PAGA violations for nonexempt employees); *DeLeon et al. v. Westlake Services, LLC*, Case No. BC 526750 (Los Angeles County Superior Court) (unpaid overtime, meal period and rest break claims for call center employees); *Sawyer v. Retail Data, LLC*, Case No. 30-2014-00753767-CU-OE-CXC (Orange County Superior Court) (unpaid wage and rest break claims for piece rate workers); *Nguyen v. Pharmerica Corporation et al.*, Case No. 30-2014-00716072-CU-OE-CXC (Orange County Superior Court) (unpaid wages and unreimbursed expenses for pharmacists); *Laumea v. Performance Food Group, Inc.*, Case No. CIVDS1407509 (San Bernardino Superior Court) (unpaid wages, meal and rest break claims for non-exempt employees); *Durroh v. East West Bank*, Case No. BC528860 (Los Angeles Superior Court) (overtime claims for failure to include bonuses in regular rate of pay for bank workers); *Gonzalez et al. v. SFFI Company, Inc. et al.*, Case No. CIVDS1504287 (San Bernardino Superior Court) (unpaid wages, meal period and rest break claims for non-exempt employees).

28. Diego Aviles is a seventh-year Senior Attorney at Wilshire Law Firm. He graduated from the University of California, Irvine with a Bachelor of Arts in Political Science as well as a Bachelor of Arts in Criminology, Law, and Society, and received his Juris Doctor from the Santa Clara University School of Law in 2015. During law school, he was President for the Santa Clara Employment Law Society, Board Member of the Honors Moot Court, and President of the Santa Clara University La Raza Chapter. He clerked for the Equal Employment Opportunity Commission in San Francisco, California, and also worked with the Workers Rights Clinic in San Jose, California, among other employment law firms. He was admitted to practice law in the State of

California in 2017. Since graduating from law school, he has focused his legal work exclusively on employment matters, including wage-and-hour class action and PAGA representative action litigation, and he has helped obtain dozens of settlements on behalf California workers. He has previously been appointed Class Counsel numerous times in California and most recently achieved a published California Appellate opinion in the matter of *Alberto v. Cambrian Homecare, et al.*, 91 Cal.App.5th 482 regarding employment arbitration agreements. He has also been a member of the California Employment Lawyers Association (CELA) since at least 2019.

29. Harry Erganyan is a fourth-year Associate Attorney at Wilshire Law Firm, PLC. He was admitted to practice law in the State of California in 2021. Harry graduated from Loyola Marymount University, with a Bachelor of Arts in Political Science. He received his Juris Doctor from Southwestern Law School. During law school, he externed for the Los Angeles City Attorney. Since January 2021, his practice has mainly been focused on wage and hour class action litigation.

30. Mariam Nazaretyan is a fourth-year Associate Attorney at Wilshire Law firm, PLC. She was admitted to practice law in the State of California in 2021. Mariam graduated from Loyola Marymount University with a Bachelor of Arts in Political Science. She received her Juris Doctor from Southwestern Law School. During law school, she was a student editor for the Journal of International Media and Entertainment Law and secretary of the Student Bar Association. Since graduating, her practice has been focused on international humanitarian law and employment law.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 29, 2024 at Los Angeles, California.


John G. Yslas

EXHIBIT 1

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Attorneys for Defendant CVAC, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

VENICE MOSES, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

CVAC, INC. dba CARMEL VALLEY
ATHLETIC CLUB and CVAC and
REFUGEE, an Illinois corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 23CV001337

*Assigned for all purposes to: Hon. Thomas W.
Wills, Dept. 15*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT**

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
Plaintiff Venice Moses (“Plaintiff”) and Defendant CVAC, Inc. dba Carmel Valley Athletic Club,

CVAC and Refuge (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as “Party.”

1. **DEFINITIONS.**

1.1 “Actions” means Plaintiff’s lawsuit alleging class action wage and hour violations against Defendant captioned *Venice Moses, individually, and on behalf of all others similarly situated v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge, an Illinois corporation*, Case No. 23CV001337, filed on April 28, 2023, in Monterey County Superior Court, and Plaintiff’s lawsuit alleging representative claims under the Private Attorneys General Act of 2004 (“PAGA”) against Defendant captioned *Venice Moses, on behalf of the state of California and other aggrieved persons v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge, an Illinois Corporation*, Case No. 23CV001869, filed on June 13, 2023, in Monterey County Superior Court.

1.2 “Administrator” means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Costs” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4 “Aggrieved Employee” means all hourly-paid, non-exempt employees who are currently or formerly employed by Defendant CVAC, Inc. dba Carmel Valley Athletic Club, CVAC and Refuge in the State of California.

1.5 “Class” means all persons currently or formerly employed by Defendant CVAC, Inc. dba Carmel Valley Athletic Club, CVAC and Refuge as hourly-paid, non-exempt employees in the State of California.

1.6 “Class Counsel” means John G. Yslas, Diego Aviles, Samanta A. Smith, Harry Erganyan, and Mariam Nazaretyan of Wilshire Law Firm, APLC.

1.7 “Class Counsel Fees Payment” means an award of attorneys’ fees granted to Class Counsel and paid from the Gross Settlement Amount. The Parties have agreed Plaintiff will

request approval from the Court of up to one-third (1/3) of the GSA (currently \$200,000.00 [two hundred thousand dollars and zero cents]).

1.8 “Class Counsel Litigation Expenses Payment” means the amount allocated to Class Counsel for reimbursement of reasonable expenses and costs incurred to prosecute the Action and paid from the Gross Settlement Amount.

1.9 “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Workweeks and PAGA Pay Periods.

1.10 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

1.11 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods, and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.12 “Class Notice” means the Court approved Notice of Settlement and hearing date for Final Approval, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.13 “Class Period” or “Class Settlement Period” means the period from April 28, 2019 through the day the Court grants preliminary approval of the Settlement (“Settlement Class Period”).

1.14 “Class Representative” means the named Plaintiff Venice Moses in the Actions.

1.15 “Class Representative Service Payment” or “Enhancement Award” means the payment to the Class Representative for initiating the Actions and providing services in support of the Action.

1.16 “Court” means the Superior Court of California, County of Monterey.

1.17 “Defendant” means named Defendant CVAC, Inc. dba Carmel Valley Athletic Club, CVAC and Refuge.

1.18 “Defense Counsel” means Barbara A. Cotter and Daniel F.C. Kozieja of Cook Brown LLP.

1.19 “Effective Date” means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.20 “Final Approval” means the Court’s order granting final approval of the Settlement.

1.21 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22 “Final Judgment” means the Judgment entered by the Court upon granting Final Approval of the Settlement.

1.23 “Gross Settlement Amount” or “GSA” means \$600,000.00 (six hundred thousand dollars with zero cents), which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 9 below.

1.24 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.25 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.

1.26 “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.27 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.28 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.29 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.30 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.31 “Operative Class Complaint” means the operative Complaint filed on April 28, 2023 in *Venice Moses, individually, and on behalf of all others similarly situated v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge, an Illinois corporation*, Case No. 23CV001337 (Monterey County Superior Court).

1.32 “Operative PAGA Complaint” means the operative Complaint filed on June 13, 2023 in captioned *Venice Moses, on behalf of the state of California and other aggrieved persons v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge, an Illinois Corporation*, Case No. 23CV001869.

1.33 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.

1.34 “PAGA Period” means the period from April 14, 2022 through the day the Court grants preliminary approval of the Settlement.

1.35 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.36 “PAGA Notice” means Plaintiff’s April 14, 2023 letter to the LWDA and Defendant providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.37 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$30,000.00), allocated 25% to the Aggrieved Employees (\$7,500.00) and 75% to LWDA (\$22,500.00) in settlement of PAGA claims.

1.38 "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.39 "Plaintiff" means Venice Moses, the named plaintiff in the Action.

1.40 "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.

1.41 "Released Class Claims" means the claims being released as described in Paragraph 5.2 below.

1.42 "Released PAGA Claims" means the claims being released as described in Paragraph 5.3 below.

1.43 "Released Parties" means Defendant and all of Defendant's respective attorneys, past, present and future divisions, predecessors, successors, shareholders, officers, directors, members, investors, management-level employees, agents, trustees, representatives, administrators, affiliated companies, fiduciaries, assigns, subrogees, executors, partners, both individually and collectively, their respective past or present owners, officers, directors, shareholders, members, investors, successors and predecessors.

1.44 "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.45 "Response Deadline" means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice packets are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.

1.46 "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.47 "Workweek" means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. **RECITALS.**

1 2.1 On April 28, 2023, Plaintiff filed the Operative Class Action Complaint alleging causes
2 of action against Defendant for (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure
3 to Pay Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit
4 Rest Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide
5 Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Expenditures; and
6 (8) Unfair Business Practices.

7 2.2 On April 14, 2024, pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave notice to
8 the LWDA and Defendant that Plaintiff intended to proceed with a representative action under
9 PAGA (LWDA-CM-948664-23). On June 13, 2023, after the 65-day statutory period passed,
10 Plaintiff filed the Operative PAGA Complaint, alleging claims for penalties pursuant to Labor
11 Code § 2699, *et seq.*

12 2.3 Defendant denies the allegations in the Actions, denies any failure to comply with the
13 laws identified in the Actions, and denies any and all liability for the causes of action alleged in
14 the Actions.

15 2.4 On June 28, 2024, the Parties participated in an all-day mediation presided over by
16 mediator Russ Wunderli, Esq. The Parties did not reach an agreement to settle that day. However,
17 the Parties continued to negotiate in good faith following mediation and with the help of Mr.
18 Wunderli were able to reach an agreement on general settlement terms on August 2, 2024.

19 2.5 In advance of mediation, Class Counsel conducted a thorough investigation into the facts
20 of, and applicable law to, the Actions. Prior to mediation, Plaintiff obtained and analyzed a
21 representative sampling of time and payroll data for Class Members and the necessary policy
22 documents through informal discovery to properly evaluate the strengths and weakness of the
23 claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient
24 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*, 48
25 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129-
26 130 (2008) ("*Dunk/Kullar*").

27 2.6 The Court has not granted class certification because the Parties engaged in mediation
28 before any class certification.

2.7 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant will pay \$600,000.00 (six hundred thousand dollars and zero cents) to fully settle, resolve, and extinguish all claims asserted in the Actions, including without limitation all claims asserted in the PAGA Notice. The Gross Settlement Amount is non-reversionary and does not include employer payroll taxes owed on the wage portions of the Individual Class Payments, which Defendant will pay separately.

3.2 Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1 To Plaintiff: A payment for the Class Representative Service Payment to Plaintiff of not more than \$7,500.00 (seven thousand five hundred dollars) in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. The Parties agree that Plaintiff will execute a full general release with a Civil Code Section 1542 waiver as to the Released Parties in exchange for the Class Representative Service Payment. In connection with such waiver, Plaintiff will withdraw her administrative Complaint captioned as *Venice Moses v. Refuge*, RCI-CM-928492, with prejudice and will inform the Labor Commissioner that her claim is fully resolved. As part of the motion for the Class Counsel Fees and Litigation Expenses Payments, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 (sixteen) court days prior to the Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will pay the Class Representative Service

1 Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee
2 taxes owed on the Class Representative Service Payment.

3 3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3)
4 of the GSA, which is currently estimated to be \$200,000.00 (two hundred thousand dollars and
5 zero cents) and a Class Counsel Litigation Expenses Payment for actual costs. Defendant will not
6 oppose requests for these payments. Plaintiff and/or Class Counsel will file a motion for Class
7 Counsel Fees and Litigation Expenses Payment no later than 16 (sixteen) court days prior to the
8 Final Approval Hearing, or as otherwise ordered by the Court. If the Court approves a Class
9 Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts
10 requested, the Administrator will allocate the remainder to the Net Settlement Amount for
11 distribution to Participating Class Members. Released Parties shall have no liability to Class
12 Counsel or any other Plaintiff's counsel arising from any claim to any portion of Class Counsel
13 Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the
14 Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099
15 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class
16 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant
17 harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or
18 sharing of any of these Payments.

19 3.2.3 To the Administrator: An Administrator Costs Payment for actual costs, not to
20 exceed \$10,000.00 (ten thousand dollars and zero cents) except for a showing of good cause and
21 as approved by the Court. To the extent the Administration Costs are less or the Court approves
22 payment of less than requested, the Administrator will retain the remainder in the Net Settlement
23 Amount to be distributed to Participating Class Members.

24 3.2.4 To Each Participating Class Member: An Individual Class Payment is calculated by
25 (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all
26 Participating Class Members during the Class Period, and (b) multiplying the result by each
27 individual Participating Class Member's Workweeks.
28

3.2.4.1 Tax Allocation of Individual Class Payments. Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to the Settlement of wage claims (the "Wage Portion"). The Wage Portion is subject to tax withholding and will be reported on an IRS W-2 Form. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to the settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro-rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$30,000.00 (thirty thousand dollars) to be paid from the Gross Settlement Amount, with 75% (\$22,500.00) allocated to the LWDA PAGA Payment and 25% (\$7,500.00) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties of \$7,500.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period, and (b) multiplying the result by each individual Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount to be distributed to Participating Class Members. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

1 4.1 Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its
2 records, Defendant represents there are 485 Class Members who collectively worked a total of
3 21,265 workweeks from April 28, 2019 through June 28, 2024, and 90 Aggrieved Employees
4 who worked a total of 2,880 PAGA Pay Periods during the PAGA Period.

5 4.2 Class Data. Not later than seven (7) days after the Court grants Preliminary Approval of
6 the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
7 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
8 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement
9 and for no other purpose, and restrict access to the Class Data to Administrator employees who
10 need access to the Class Data to effect and perform under this Agreement. Defendant has a
11 continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted
12 class member identifying information and to provide corrected or updated Class Data as soon as
13 reasonably feasible. Without any extension of the deadline by which Defendant must send the
14 Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts,
15 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class
16 Data.

17 4.3 Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement
18 Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting
19 the funds to the Administrator no later than 14 (fourteen) days after the Effective Date.

20 4.4 Payments from the Gross Settlement Amount. Within seven (7) days after Defendant
21 fully funds the GSA, the Administrator will mail checks for all Individual Class Payments, all
22 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Costs Payment, the
23 Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class
24 Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class
25 Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not
26 precede disbursement of Individual Class Payments and Individual PAGA Payments.

27 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or
28 Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail. The

face of each check shall prominently state the date (180 days after the date of mailing) when the check will be voided ("Void Date"). The Administrator will cancel all checks not cashed by the Void Date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom the Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2 The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and canceled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. **RELEASES OF CLAIMS.** Effective on the date when Defendant fully funds the Gross Settlement Amount and all employer payroll taxes owed on the Wage Portion of the Individual

1 Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all
2 Released Parties as follows:

3 5.1 Plaintiff's Release. Plaintiff discharges Released Parties from all claims,
4 transactions, or occurrences, that occurred during the Class Period, including all claims that were,
5 or reasonably could have been, alleged, based on the facts contained in the Operative Complaint;
6 and claims under the Fair Employment and Housing Act, Americans with Disabilities Act, Title
7 VII of the Civil Rights Act of 1964, the California Labor Code, and all equivalent claims under
8 federal law ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to
9 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
10 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
11 on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts
12 or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be
13 true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects,
14 notwithstanding such different or additional facts or Plaintiff's discovery of them.

15 5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
16 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
17 and benefits, if any, of section 1542 of the California Civil Code, which reads:

18 A general release does not extend to claims that the creditor or releasing party does
19 not know or suspect to exist in his or her favor at the time of executing the release,
20 and that if known by him or her would have materially affected his or her settlement
21 with the debtor or Released Party.

22 5.2 Released Class Claims: All Participating Class Members will release all claims, rights,
23 demands, liabilities, and causes of action, in law or in equity, arising at any time during the Class
24 Period for the claims brought by Plaintiff in the Operative Class Complaint, or that could have
25 been brought by Plaintiff against Defendant in the Operative Class Complaint based on the facts
26 alleged therein.

5.3 Released PAGA Claims: All Aggrieved Employees will release all claims for civil penalties that were alleged or could have been alleged in the Operative PAGA Complaint and the PAGA Notice based on the facts alleged therein during the PAGA Period.

6. **MOTION FOR PRELIMINARY APPROVAL**. Plaintiff will prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”).

6.1 Defendant’s Declaration in Support of Preliminary Approval. Within 10 (ten) days of the full execution of this Agreement, Defendant will prepare and deliver to Class Counsel a signed Declaration from Defendant and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and disclosing all facts relevant to any actual or potential interest in Access Reproductive Justice. In their Declaration, Defense Counsel and Defendant shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff’s Responsibilities. Plaintiff will prepare all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vi) all facts relevant to any actual or potential conflict of interest with Class Members, and/or the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

1 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
2 for expeditiously finalizing the Motion for Preliminary Approval. Class Counsel will obtain a
3 prompt hearing date for the Motion for Preliminary Approval, file the Motion for Preliminary
4 Approval no later than 16 (sixteen) court days before the hearing, unless otherwise ordered by the
5 Court, and deliver the Court's Preliminary Approval Order to the Administrator.

6 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
7 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
8 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
9 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
10 Preliminary Approval or conditions Preliminary Approval on any material change to this
11 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
12 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
13 otherwise satisfy the Court's concerns.

14 **7. SETTLEMENT ADMINISTRATION.**

15 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement
16 Administrators to serve as the Administrator and verified that, as a condition of appointment, the
17 Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties
18 specified in this Agreement in exchange for payment of Administration Costs. The Parties and
19 their Counsel represent that they have no interest or relationship, financial or otherwise, with the
20 Administrator other than a professional relationship arising out of prior experiences administering
21 settlements.

22 7.2 Employer Identification Number. The Administrator shall have and use its own
23 Employer Identification Number for purposes of calculating payroll tax withholdings and
24 providing reports to state and federal tax authorities.

25 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that
26 meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
27 section 468B-1 for the funding of the GSA. Any interest that accrues on the GSA sums paid into
28

the QSF prior to distribution by the Administrator will become part of the NSA for distribution to Participating Class Members.

7.4 Notice to Class Members.

7.4.1 No later than five (5) calendar days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 (fourteen) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3 Not later than five (5) calendar days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

7.4.4 The deadlines for Class Members’ written objections, challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional fourteen days (14) days beyond the forty-five (45) days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

1 7.4.5 If the Administrator, Defendant, or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class Data and should
3 have received Class Notice, the Parties will expeditiously meet and confer in person or by
4 telephone, and in good faith in an effort to agree on whether to include them as Class Members.
5 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
6 Members, and the Administrator will send, via email or overnight delivery, a Class Notice
7 requiring them to exercise options under this Agreement not later than 14 (fourteen) days after
8 receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

9 7.5 Requests for Exclusion (Opt-Outs).

10 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement
11 must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not
12 later than 45 (forty-five) days after the Administrator mails the Class Notice (plus an additional
13 14 (fourteen) days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
14 is a letter from a Class Member or his/her representative that reasonably communicates the Class
15 Member's election to be excluded from the Settlement and includes the Class Member's name,
16 address and email address or telephone number. To be valid, a Request for Exclusion must be
17 timely faxed, emailed, or postmarked by the Response Deadline.

18 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails
19 to contain all the information specified in the Class Notice. The Administrator shall accept any
20 Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the
21 person as a Class Member and the Class Member's desire to be excluded. The Administrator's
22 determination shall be final and not appealable or otherwise susceptible to challenge. If the
23 Administrator has reason to question the authenticity of a Request for Exclusion, the
24 Administrator may demand additional proof of the Class Member's identity. The Administrator's
25 determination of authenticity shall be final and not appealable or otherwise susceptible to
26 challenge.

27 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion
28 is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and

bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under paragraphs 5.2 and 5.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the Released PAGA Claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 (forty-five) days after the Administrator mails the Class Notice (plus an additional 14 (fourteen) days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

1 7.7.2 Participating Class Members may send written objections to the Administrator, by
2 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
3 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
4 Participating Class Member who elects to send a written objection to the Administrator must do
5 so not later than 45 (forty-five) days after the Administrator's mailing of the Class Notice (plus
6 an additional 14 (fourteen) days for Class Members whose Class Notice was re-mailed).

7 7.7.3 Non-Participating Class Members have no right to object to any of the class action
8 components of the Settlement.

9 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
10 performed or observed by the Administrator contained in this Agreement or otherwise.

11 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish,
12 maintain and use an internet website to post information of interest to Class Members including
13 the date, time and location for the Final Approval Hearing and copies of the Settlement
14 Agreement; Motion for Preliminary Approval; Preliminary Approval Order; Class Notice;
15 Motion for Final Approval; Motion for Class Counsel Fees Payment, Class Counsel Litigation
16 Expenses Payment and Class Representative Service Payment; the Final Approval Order; and the
17 Judgment. The Administrator will also maintain and monitor an email address and a toll-free
18 telephone number to receive Class Member calls, faxes and emails.

19 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
20 promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later
21 than five (5) days after the expiration of the deadline for submitting Requests for Exclusion, the
22 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
23 and other identifying information of Class Members who have timely submitted valid Requests
24 for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
25 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
26 Exclusion from Settlement submitted (whether valid or invalid).

27 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports
28 to Class Counsel and Defense Counsel that, among other things, tally the number of: Class

1 Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether
2 valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods
3 received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA
4 Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment
5 of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and
6 objections received.

7 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to
8 address and make final decisions consistent with the terms of this Agreement on all Class Member
9 challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision
10 shall be final and not appealable or otherwise susceptible to challenge.

11 7.8.5 Administrator’s Declaration. Not later than 14 (fourteen) days before the date by
12 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
13 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
14 for filing in Court attesting to its due diligence and compliance with all of its obligations under
15 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
16 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
17 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
18 number of written objections and attach the Exclusion List. The Administrator will supplement
19 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
20 for filing the Administrator’s declaration(s) in Court.

21 7.8.6 Final Report by Settlement Administrator. Within 10 (ten) days after the
22 Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide
23 Class Counsel and Defense Counsel with a final report detailing its disbursements by employee
24 identification number only of all payments made under this Agreement. At least 15 (fifteen) days
25 before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel
26 and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement
27 of all payments required under this Agreement. Class Counsel is responsible for filing the
28 Administrator's declaration in Court.

8. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendant represents there are 485 Class Members who collectively worked a total of 21,625 Workweeks from April 28, 2019 through June 28, 2024. Should the Workweeks increase beyond 10% worked by the Class Members during the Class Period, Defendant shall, at its option, either (a) increase the GSA on a pro-rata basis equal to the percentage increase in the number of workweeks worked by the Class Members above 10%. For example, if the number of workweeks increase by 11% through the Class Release Period, then the GSA shall increase by 1%; or (b) cap the Class Period as of the date the number of Workweeks reaches but does not exceed 10%. If this provision is triggered so as to increase the GSA, the Parties agree that the portion of the GSA allocated to attorneys' fees will increase proportionally such that the total amount of attorneys' fees remains one-third of the GSA after the upward adjustment required by this provision is implemented.

9. **DEFENDANT'S RIGHT TO WITHDRAW.** If the valid Requests for Exclusion identified in the Exclusion List represent more than an aggregate total of 10% of verified Workweeks, Defendant may, but is not obligated, to elect to withdraw from the Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be *void ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Costs incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than 5 (five) business days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. **MOTION FOR FINAL APPROVAL.** Not later than 16 (sixteen) court days before the calendared Final Approval Hearing, unless otherwise scheduled by the Court, Plaintiff will file in Court, a Motion for Final Approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l); a Proposed Final Approval Order; and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class

Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Administrator Costs Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, the Actions, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment as set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is

1 finally resolved and the Judgment becomes final, except as to matters that do not affect the amount
2 of the Net Settlement Amount.

3 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted
6 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and Entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Costs reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the
10 Court's award of the Class Representative Service Payment or any payments to Class Counsel
11 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
12 as long as the Gross Settlement Amount remains unchanged.

13 11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
14 Procedure §384, the Parties will work together in good faith to jointly submit a proposed amended
15 judgment.

16 12. **ADDITIONAL PROVISIONS.**

17 12.1 No Admission of Liability, Class Certification or Representative Manageability for
18 Other Purposes. This Agreement represents a compromise and settlement of highly disputed
19 claims. Nothing in this Agreement is intended or should be construed as an admission by
20 Defendant that any of the allegations in the Operative Complaint has merit or that Defendant has
21 any liability for any claims asserted; nor should it be intended or construed as an admission by
22 Plaintiff that Defendant's defenses in the Actions have merit. The Parties agree that class
23 certification and representative treatment is for purposes of this Settlement only. If, for any
24 reason, the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendant
25 reserves the right to contest certification of any class for any reason, Defendant reserves all
26 available defenses to the claims in the Actions, and Plaintiff reserves the right to move for class
27 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
28 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be

admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Defense Counsel's and Class Counsel's ethical obligations and Class Counsel's fiduciary duties owed to Class Members.

12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

1 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
2 represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
3 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate
4 its terms, and to execute any other documents reasonably required to effectuate the terms of this
5 Agreement including any amendments to this Agreement.

6 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their
7 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
8 Settlement Agreement, submitting supplemental evidence and supplementing points and
9 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
10 or content of any document necessary to implement the Settlement, or on any modification of the
11 Agreement that may become necessary to implement the Settlement, the Parties will seek the
12 assistance of a mediator and/or the Court for resolution.

13 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not
14 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
16 action, or right released and discharged by the Party in this Settlement.

17 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are
18 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
20 Part 10, as amended) or otherwise.

21 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended,
22 modified, changed, or waived only by an express written instrument signed by all Parties or their
23 representatives, and approved by the Court.

24 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure
25 to the benefit of, the successors of each of the Parties.

26 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the state of California, without
28 regard to conflict of law principles.

12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

12.14 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

12.15 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

12.16 Notice. All notices, demands, or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

John G. Yslas
john.yslas@wilshirelawfirm.com
Diego Aviles
daviles@wilshirelawfirm.com
Samantha A. Smith
Samantha.smith@wilshirelawfirm.com
Harry Erganyan
Herganyan@wilshirelawfirm.com
Mariam Nazaretyan
mariam.nazaretyan@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

To Defendant:

Attorneys for Plaintiff Venice Moses, individually
And on behalf of others similarly situated

Barbara A. Cotter, Esq. (Sbn 142590)
Daniel F.C. Kozieja, Esq. (SBN 331123)
COOK BROWN, LLP
2407 J Street, Second Floor
Sacramento, California 95816
T. 916-442-3100 | F. 916-442-4227
Email: bcotter@cookbrown.com
dkozieja@cookbrown.com

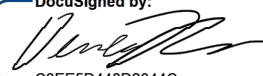
12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED.

By the Parties:

DATED: 10/22/2024

DocuSigned by:

C3EE5D448D2044C...

Plaintiff Venice Moses

DATED: _____

Defendant CVAC, Inc. dba Carmel Valley Athletic Club,
CVAC and Refuge

By: _____

Position: _____

Approved by counsel:

DATED: 10/22/2024

WILSHIRE LAW FIRM

BY: 

John G. Yslas

Diego Aviles

Counsel for Plaintiff Venice Moses

DATED:

COOK BROWN, LLP

BY: _____

Barbara A. Cotter

Daniel F.C. Kozieja

Counsel for Defendant CVAC, Inc. dba Carmel Valley
Athletic Club, CVAC and Refuge

Barbara A. Cotter, Esq. (Sbn 142590)
Daniel F.C. Kozieja, Esq. (SBN 331123)
COOK BROWN, LLP
2407 J Street, Second Floor
Sacramento, California 95816
T. 916-442-3100 | F. 916-442-4227
Email: bcotter@cookbrown.com
dkozieja@cookbrown.com

12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or by email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IT IS SO AGREED.

By the Parties:

DATED: _____

Plaintiff Venice Moses

DATED: 10/28/24



Defendant CVAC, Inc. dba Carmel Valley Athletic Club,
CVAC and Refuge

By: Kyle McKay

Position: COO

1
2
3 Approved by counsel:

4 DATED:

WILSHIRE LAW FIRM

6
7 BY: _____

John G. Yslas

8 Diego Aviles

Counsel for Plaintiff Venice Moses

9
10 DATED: 10/22/24

COOK BROWN, LLP

11
12
13 BY: _____

Barbara A. Cotter

Daniel F.C. Kozieja

Counsel for Defendant CVAC, Inc. dba Carmel Valley
Athletic Club, CVAC and Refuge

EXHIBIT A

EXHIBIT “A”

**COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

Venice Moses v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge
Case No. 23CV001337 (Monterey County Superior Court)

***The Monterey County Superior Court authorized this notice.
It is not junk mail, spam, an advertisement, or solicitation by a lawyer.
Please read it carefully! You are not being sued.***

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from the settlement of an employee class action lawsuit and a representative action lawsuit (“Action”) against CVAC, Inc. dba Carmel Valley Athletic Club, CVAC and Refuge (“Defendant”) for alleged wage and hour violations. The Action was filed by former employee, Venice Moses, and seeks payment of back wages and other relief for a class of all persons currently or formerly employed by Defendant as hourly-paid, non-exempt employees in the State of California (“Class Members”) who worked for Defendant during the Class Period (April 28, 2019, through [INSERT]); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all individuals who worked for Defendant within the State of California at any time during the PAGA Period (April 14, 2022, through [INSERT]) (“Aggrieved Employees”)

The Settlement has two main parts: (1) a Class settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA settlement requiring Defendant to fund Individual PAGA Payments and pay PAGA Penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$ [REDACTED] (less withholding) and your Individual PAGA Payment is estimated to be \$ [REDACTED]**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked [REDACTED] Workweeks during the Class Period and you worked [REDACTED] Pay Periods during the PAGA Period**. If you believe that you worked more during either period, you can submit a challenge by the deadline date.

The Court has already preliminarily approved the Settlement and approved this Notice. The Court has not yet decided whether to grant final approval of the Settlement. Your legal rights are affected whether you act or not. READ THIS NOTICE CAREFULLY. You will be deemed to have read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Class Claims).
EXCLUDE YOURSELF	If you don't want to fully participate in the Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the Settlement. See Section 12 of this Notice. However, you cannot opt-out of the PAGA portion of the Settlement. If you are also an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain bound by the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
PARTICIPATING CLASS MEMBERS CAN OBJECT	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 17 of this Notice.
YOU CAN PARTICIPATE IN THE FINAL APPROVAL HEARING	The Court's Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Monterey County Superior Court, located at 1200 Aguajito Road, Monterey, CA 93940, in Department 15 before Judge Thomas W. Wills. This hearing may change as explained below in Section 19. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's Zoom appearance platform.

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

	Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 19 of this Notice.
CHALLENGE YOUR NUMBER OF WORKWEEKS AND/OR PAY PERIODS	The amount of your Individual Class Payment depends on how many workweeks you worked at least one day during the Class Period. The amount of your share of the PAGA Penalties (if any) depends on how many pay periods you worked at least one day during the PAGA Period. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers and want to challenge the number, you must do so by _____. See Section 8 of this Notice.

BASIC INFORMATION

1. WHY AM I RECEIVING THIS NOTICE?

Defendant's records indicate that you worked for Defendant in California as a non-exempt employee at some point(s) between April 28, 2019, and [INSERT], and are therefore a member of the Class for purposes of this Settlement.

You received this Notice because you have a right to know about the Settlement of the Action, and about all of your options before the Court decides whether to grant final approval of the Settlement. The Settlement will resolve all Class Members' claims, which are described below, during the Class Period. The Settlement will also resolve claims for civil penalties brought under the California Private Attorneys' General Act ("PAGA"). If you are a Class Member, you may also be an "Aggrieved Employee" if you worked for Defendant in California during the "PAGA Period," which is April 14, 2022, through [INSERT].

If the Court grants Final Approval to the Settlement, a settlement Administrator appointed by the Court will issue the payments provided for by the Settlement to Class Members. You are encouraged to always keep your address up to date with the Administrator (the Administrator's contact information can be found in Section 12, below).

This Notice package explains the allegations and background regarding the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to receive those benefits.

The Court in charge of the Action is the Monterey County Superior Court, and the case is titled, *Venice Moses v. CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge*, Case No. 23CV001337. The person who sued, Venice Moses, is the Plaintiff, and the company sued, CVAC, Inc. dba Carmel Valley Athletic Club and CVAC and Refuge is the Defendant.

2. WHAT IS THE LAWSUIT ABOUT?

The Plaintiff in the lawsuit alleges wage and hour violations against Defendant for: (1) Failure to Pay Minimum and Straight Time Wages; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Meal

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Timely Pay Final Wages at Termination; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Indemnify Employees for Expenditures; and (8) Unfair Business Practices. In addition, Plaintiff is seeking to recover civil penalties pursuant to PAGA (“PAGA Penalties”) based on the alleged violations of the California Labor Code listed above. Defendant denies Plaintiff’s claims and denies any wrongdoing.

3. WHY IS THIS A CLASS ACTION?

In an employment class action, one or more people called “Class Representatives” (in this case, the Plaintiff) sue on behalf of all non-exempt workers who they contend have similar claims. All of these workers are a Class or Class Members. Bringing one lawsuit, as opposed to many small ones, saves money, time and court resources. The court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of the Plaintiff or Defendant on the merits of the claims alleged in the lawsuit. Plaintiff believes Plaintiff would win at trial. Defendant thinks that Plaintiff’s lawsuit would not proceed to a trial and/or that Plaintiff would not win at trial. However, there has been no trial. Instead, in acknowledgment of the risk that both Parties face should the case proceed, the Parties have agreed to a negotiated settlement that is subject to the Court’s Final Approval. This way, all Parties avoid the cost of preparing for and conducting a trial, the risk of losing the right to a trial, and the workers affected by the alleged violations receive compensation. The Settlement represents a compromise and settlement of highly disputed claims. The Plaintiff, as well as Plaintiff’s lawyers (called “Class Counsel”), believes the Settlement is fair and reasonable and in the best interests of all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

5. WHO IS INCLUDED IN THE SETTLEMENT?

If you received this Notice, you are a Class Member for settlement purposes. The Class includes: All employees of Defendant who were classified as non-exempt and worked within the State of California at any time from April 28, 2019, through **[INSERT]**.

6. ARE THERE EXCEPTIONS TO BEING INCLUDED?

You are not a Class Member if you already have resolved the claims asserted in this lawsuit, whether by settlement or a separate legal proceeding (i.e., another lawsuit).

THE SETTLEMENT BENEFITS—WHAT YOU GET

7. WHAT DOES THE SETTLEMENT PROVIDE?

Defendant has agreed to pay a Gross Settlement Amount (“GSA”) of \$600,000 (six hundred thousand dollars with zero cents) to settle the lawsuit. From the GSA, Class Counsel will apply to the Court for attorneys’ fees of up to one-third of the GSA, currently \$200,000.00 and up to \$**[INSERT]** in costs; a Class Representative Service Payment of \$7,500.00 to Plaintiff (for Plaintiff’s work and efforts

QUESTIONS? CALL **1-800-XXX-XXXX** TOLL FREE

prosecuting this case); a PAGA Penalties payment of \$30,000.00 to resolve the PAGA claims; and Settlement Administration Costs to [INSERT], not to exceed \$[INSERT]. The exact amount of the Class Counsel's Fees and Litigation Expenses, Class Representative Service Payment, and Administration Costs will be determined by the Court at the Final Approval hearing. The remaining portion of the Settlement amount, the "Net Settlement Amount" or the "NSA," is currently estimated to be approximately \$XXXXXXX. The NSA will be apportioned and paid out as Individual Class Payments to the Settlement Class Members, who are the Class Members that do not request to be excluded ("opt-out") of the Settlement.

PAGA Penalties payment: As part of the PAGA portion of the Settlement, the Parties will ask the Court to approve a \$30,000.00 PAGA Penalties payment in settlement of claims for civil penalties under PAGA. As required under PAGA, 75% of the PAGA Penalties payment, or \$22,500.00, will be paid to the California Labor and Workforce Development Agency. The remaining 25% of the PAGA Penalties payment, or \$7,500.00, will be distributed to the Aggrieved Employees as Individual PAGA Payments.

8. HOW MUCH WILL MY PAYMENT BE?

An approximation of your Individual Class Payment appears on the first page of this Notice. If you are also an Aggrieved Employee, an approximation of your Individual PAGA Payment will also appear on the first page of this Notice.

Individual Class Payment: Your Individual Class Payment is based on the number of Workweeks you worked, as represented in Defendant's records, in comparison to the total number of Workweeks worked by all Class Members during the Class Period (April 28, 2019, through [INSERT]). Eighty percent (80%) of each Class Member's Individual Class Payment will be treated as a payment in settlement of the alleged claims for penalties and interest and will be reported on a Form 1099 by the Settlement Administrator, and twenty percent (20%) of each Class Member's Individual Class Payment will be treated as a payment in settlement of alleged claims for unpaid wages. The 20% allocated as unpaid wages will be reduced by applicable payroll tax withholdings and deductions and reported on a Form W-2.

Individual PAGA Payment: If you worked for Defendant from April 14, 2022, through [INSERT] ("PAGA Period"), you are also an "Aggrieved Employee" and will receive an Individual PAGA Payment in addition to your Individual Class Payment. The Individual PAGA Payments are based on the number of PAGA Pay Periods worked by each Aggrieved Employee in comparison to the total amount of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period. One hundred percent (100%) of each Aggrieved Employees' Individual PAGA Payment will be characterized as penalties and will not be reduced by payroll tax withholdings and deductions. The Individual PAGA Payment will be reported on a Form 1099 by the Settlement Administrator. An approximation of your anticipated Individual PAGA Payment appears on the first page of this Notice.

For the Class Members who are also Aggrieved Employees, their Individual Class Payment will be combined with their Individual PAGA Payment, and they will receive a single check for the combined payments. If a Class Member chooses to opt-out of the Class Action Settlement, they will still receive an Individual PAGA Payment, as Aggrieved Employees cannot opt-out of the PAGA portion of the Settlement under California law.

HOW YOU GET A PAYMENT

9. HOW DO I RECEIVE A PAYMENT?

You do not need to do anything to receive a payment. However, if you believe that the number of Workweeks or PAGA Pay Periods you worked is incorrect, please correct it and provide any supporting evidence to the settlement Administrator, whose contact information is listed in Section 12 below.

10. WHEN WOULD I GET MY PAYMENT?

The Court will hold a Final Fairness Hearing on [REDACTED], to decide whether to approve the Settlement. If the Judge approves the Settlement, and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved and resolving them can take time. If there is no objection, the Effective Date of the Settlement will be the date of entry of the Court's Order granting final approval.

Following the Effective Date, Individual Class Payments and Individual PAGA Payments will be mailed to Participating Class Members and Aggrieved Employees approximately 30 days after the Court's approval of the Settlement becomes final so long as there are no appeals.

Settlement checks should be cashed promptly upon receipt. Proceeds of checks which remain uncashed after 180 days from the date of issuance will be forwarded to the California Controller's Unclaimed Property Fund in the name of the Class Member. You can search for unclaimed property on the State's website at: https://www.sco.ca.gov/search_upd.html

If your settlement check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

For an update on the status of payments, please contact the Settlement Administrator (see Section 12).

11. WHAT AM I GIVING UP TO GET A PAYMENT?

If the Court approves this Settlement and unless you exclude yourself from the Class Action Settlement, you will become a Participating Class Member, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the legal claims being resolved in this Settlement. Specifically, you will be giving up or "releasing" the Released Class Claims described below against Defendant and all of Defendant's respective attorneys, past, present and future divisions, predecessors, successors, shareholders, officers, directors, members, investors, management-level employees, agents, trustees, representatives, administrators, affiliated companies, fiduciaries, assigns, subrogees, executors, partners, both individually and collectively, their respective past or present owners, officers, directors, shareholders, members, investors, successors and predecessors ("Released Parties"). The releases become effective once the GSA is fully funded by Defendant.

Released Class Claims: The "Released Class Claims" are all claims, rights, demands, liabilities, and causes of action, in law or in equity, arising at any time during the Class Period for the claims brought by Plaintiff in the Operative Class Complaint, or that could have been brought by Plaintiff against Defendant in the Operative Class Complaint based on the facts alleged therein.

Released PAGA Claims: If you an Aggrieved Employee (i.e. if you worked for Defendant during the PAGA Period), you will also release all claims for civil penalties that were alleged or could have been alleged in the Operative PAGA Complaint and the PAGA Notice based on the facts alleged therein during the PAGA Period.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?

To exclude yourself from the Settlement, you must send the Settlement Administrator a written and signed request for exclusion which must be postmarked no later than [45 days after Class Notice is Mailed]. Be sure to include your name, address, and telephone number, and any other information you think would be helpful to the settlement Administrator to identify you. You can send your request for exclusion to the settlement Administrator at:

[ADMINISTRATOR]
Moses v. CVAC Settlement
XXXXX
City, State, XXXXX
Email:

If you ask to be excluded from the Settlement, you will not be legally bound by anything that happens in the Action, except as it relates to the settlement of the PAGA claim. If you ask to be excluded from the Settlement you will not be able to object to the Settlement and you will not receive an Individual Class Payment, but you will still receive an Individual PAGA Payment if you worked for Defendant during the PAGA Period (April 14, 2022, through [INSERT]). If you ask to be excluded, you may be able to sue (or continue to sue) Defendant in the future.

13. IF I DON'T EXCLUDE MYSELF, CAN I SUE DEFENDANT FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is [45 days after Class Notice is Mailed].

14. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you will not receive any money from the Class Action Settlement. However, if you timely exclude yourself from the Class Action Settlement, you will retain the right to pursue your own legal action against Defendant, if you desire.

THE LAWYERS REPRESENTING YOU IN THIS LAWSUIT

15. DO I HAVE A LAWYER IN THIS CASE?

The Court has determined that Wilshire Law Firm is qualified to represent you and the Class Members in the lawsuit. These lawyers are called Class Counsel, and their contact information is listed below. If you want to be represented by your own lawyer, you may hire one at your own expense.

John G. Yslas
john.yslas@wilshirelawfirm.com
Diego Aviles
daviles@wilshirelawfirm.com
Samantha A. Smith
Samantha.smith@wilshirelawfirm.com
Harry Erganyan
Herganyan@wilshirelawfirm.com
Mariam Nazaretyan
mariam.nazaretyan@wilshirelawfirm.com
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

16. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to approve up to 1/3 of the GSA (currently \$200,000.00) for attorneys' fees incurred in investigating the facts, litigating the case, and negotiating the Settlement. Class Counsel will also seek Court-approval of up to \$[INSERT] in litigation expenses incurred in this matter. The Court may award Class Counsel less than what they request. Class Counsel will also ask the Court to approve payment to Plaintiff Venice Moses in the amount of \$7,500 in addition to Plaintiff's Individual Class Payment and Individual PAGA Payment for the initiative, risk, and time and energy Plaintiff has spent in service to the Class as the Class Representative. The Court may award the Class Representative less than what is requested.

OBJECTING TO THE SETTLEMENT

You can and have the right to tell the Court you do not agree with the Settlement or some part of it.

17. HOW DO I TELL THE COURT THAT I OBJECT TO THE SETTLEMENT?

If you don't think the Settlement is fair, you can object to some or all of the Settlement. You can either object to the Settlement in person at the Final Approval Hearing or you can submit a written objection. Written objections and notices of intent to appear at the Final Approval Hearing must be mailed to the Settlement Administrator and postmarked on or before [REDACTED], at the following address:

[ADMINISTRATOR]
Moses v. CVAC Settlement
XXXXXX

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

City, State, XXXXX

Email:

The written objection should state your name and address and describe all legal and factual reasons that you object to the terms of the Settlement. You should also include or attach any documents upon which your objection is based. If the Court overrules the objection at the Final Approval hearing, the Settlement Agreement will be approved, and you will receive your payment. If you do not submit a written objection, you may still appear at the Final Approval hearing to voice your objection or to otherwise observe the proceedings.

18. WHAT'S THE DIFFERENCE BETWEEN OBJECTING AND REQUESTING EXCLUSION?

Objecting is simply telling the Court that you do not agree with something about the Settlement. You can object only if you stay in the Class.

Requesting exclusion is telling the Court that you do not want to be part of the Class. If you exclude yourself from the Class, you have no basis to object because the case no longer affects you, and you do not get any money from the Class Settlement. If you submit both an objection and a request to be excluded from the settlement, the request to be excluded will control and you will not get any money from the Class settlement.

THE COURT'S FAIRNESS HEARING

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement.

You may attend and you may ask to speak, but you don't have to.

19. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court will hold a Final Approval Hearing at on in Department 15 of the Monterey County Superior Court located at 1200 Aguajito Road, Monterey, CA 93940 to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. If there are objections, the Court will consider them at that time. The Court will also be asked to approve the requests for the Class Representative Service Payment and the Class Counsel Fees and Litigation Expenses Payments.

20. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the Court may have. However, you are welcome to attend. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection to the settlement administrator on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

IF YOU DO NOTHING

21. WHAT IF I DO NOTHING AT ALL?

If you do nothing, you will receive a Settlement payment, and you will be bound by the terms of the Settlement, which means that you will not be able to start a lawsuit, continue a lawsuit, or be a part of any other lawsuit against the Defendant about the legal issues in the Action.

GETTING MORE INFORMATION

22. HOW DO I GET MORE INFORMATION?

You may contact Class Counsel at the contact information listed above in Section 15 if you have any questions about the Settlement. You may also contact the Court-appointed Settlement Administrator, Phoenix Settlement Administrators, Inc., by calling toll free 1-800-XXXX-XXXX, or you can write to the Administrator at the following address:

[ADMINISTRATOR]
Moses v. CVAC Settlement
XXXXX
City, State, XXXXX
Email:

PLEASE DO NOT TELEPHONE THE COURT OR CVAC, INC. DBA CARMEL VALLEY ATHLETIC CLUB, CVAC AND REFUGE'S COUNSEL FOR INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS. YOU MAY, HOWEVER, CALL CLASS COUNSEL OR THE SETTLEMENT ADMINISTRATOR, LISTED ABOVE.

QUESTIONS? CALL 1-800-XXX-XXXX TOLL FREE

EXHIBIT 2

Thank you for your Proposed Settlement Submission

From DIR PAGA Unit <no-reply@formassembly.com>

Date Tue 10/29/2024 12:46 PM

To Janette Ortega <janette.ortega@wilshirelawfirm.com>

10/29/2024 12:45:50 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private Attorneys General Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)