

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS

MARLON ROBERTSON, individually, )  
and on behalf of all others similarly )  
situated, )  
  )  
Plaintiff, )  
  )  
v.                                     )      Case No. 2:21-cv-02507  
  )  
  )  
VVF INTERVEST, LLC, VVF KANSAS, )  
LLC, & VVF KANSAS SERVICES, LLC, )  
  )  
Defendants. )

**COLLECTIVE ACTION SETTLEMENT AGREEMENT**

This Collective Action Settlement Agreement (the “Agreement”) is made and entered into by and between Plaintiff Marlon Robertson (“Named Plaintiff”) and all members of the Settlement Collective (defined below), on the one hand, and Defendants VVF Intervest, LLC; VVF Kansas, LLC; and VVF Kansas Services, LLC (“Defendants” or “Settling Entities”), on the other hand (collectively, the “Parties”), to resolve all claims and disputes which are the subject of the lawsuit filed by Named Plaintiff, currently pending in the U.S. District Court for the District of Kansas, *Robertson et al. v. VVF Intervest, LLC, et al.*, Case No. 2:21-cv-02507 (the “Litigation”).

### **RECITALS**

WHEREAS, Named Plaintiff filed a Complaint in this Litigation, on behalf of himself and all others similarly situated, alleging that Settling Entities violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, Kansas Wage Payment Act (“KWPA”), Kan. Stat. Ann. § 44-313, *et. seq.*, and the common law claim for unjust enrichment when Defendants’ policies, practices and/or procedures have resulted in the willful, systemic underpayment of straight time and overtime compensation due and owing to all hourly, non-exempt, workers when it: (1) rounded employee’s clock-in and clock-out times in Defendants’ favor; (2) manipulated the FLSA workweek in an effort to avoid paying overtime; and (3) automatically deducted a 30 minute lunch breaks even when such breaks were not taken. *See* ECF Doc. 1.

WHEREAS, Named Plaintiff has sought the recovery of, among other things, minimum wages, overtime wages, straight-time wages, liquidated damages, treble damages, equitable remedies, attorneys’ fees, and costs;

WHEREAS, Settling Entities deny and continue to deny all of the allegations made by Named Plaintiff, and deny and continue to deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action alleged, or that any claims asserted by Named

Plaintiff may proceed on a class or collective action basis. Nonetheless, without admitting or conceding any arguments, issues, liability, or damages whatsoever, or that any claims alleged may proceed on a class or collective action basis, Settling Entities have agreed to settle the claims on the terms and conditions set forth in this Agreement to avoid the burden and expense of continuing to defend against litigation;

WHEREAS, Collective Action Counsel (as defined below) has interviewed Named Plaintiff and other members of the Settlement Collectives, and has reviewed and analyzed documents and data produced by Settling Entities;

WHEREAS, the Court granted the Parties Joint Motion to Conditionally Certify the Class (ECF Doc. 34);

WHEREAS, Collective Action Counsel has analyzed and evaluated the merits of the claims made against Settling Entities, and the impact of this Agreement on Named Plaintiff and the Settlement Collective;

WHEREAS, based upon their analysis and evaluation of a number of factors, and recognizing the risks of litigation with respect to certain claims, including the possibility that any litigation might result in a recovery that is less favorable to the Settlement Collective, and may not occur for several years, or at all, Collective Action Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interests of the Settlement Collective;

WHEREAS, the Parties recognize that the outcome in the Litigation is uncertain and that achieving a final result through the litigation process would require substantial additional risk, discovery, time, and expense;

WHEREAS, the Parties desire to settle fully and finally the differences between them and

have agreed to settle this case as to Named Plaintiff as well as all individuals comprising the Settlement Collectives, as defined below; and

WHEREAS, the Parties agree to undertake their best efforts, including all steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree, subject to approval of the Court, as follows:

## **AGREEMENT**

### **I. DEFINITIONS**

A. **“Agreement.”** “Agreement” means this Collective Action Settlement Agreement, together with all of its attachments and exhibits, which the Parties understand and agree sets forth all material terms and conditions of the settlement between them, and which is subject to Court approval. It is understood and agreed that the obligations of the Settling Entities for payment under this Agreement are conditioned on, *inter alia*, the occurrence of the Effective Date.

B. **“Collective Action Counsel” or “Plaintiff’s Counsel.”** “Collective Action Counsel” or “Plaintiffs’ Counsel” means Matthew E. Osman and David Kim of Osman & Smay, LLC.

C. **“Class Representative”** “Class Representative” means Named Plaintiff Marlon Robertson.

D. **“Collective Employees.”** “Collective Employees” means the group of individuals in the collective conditionally certified by the Court, i.e., all current and former non-exempt hourly

employees who were employed by VVF at its Kansas facility any time from November 2, 2018 through December 31, 2022.

E. **“Collective Member” or “Settlement Collective.”** “Collective Member” or “Settlement Collective” means Named Plaintiff and all Opt-In Plaintiffs who become bound by the Released Claims and Released FLSA Claims portion of the Judgment if the Effective Date occurs.

F. **“Complaint.”** “Complaint” means Plaintiffs’ Class and Collective Action Complaint and Jury Demand dated November 2, 2021, filed by Named Plaintiff in the Litigation, and all subsequent amendments thereto. *See ECF Docs. 1.*

G. **“Counsel for Settling Entities” or “Defense Counsel.”** “Counsel for Settling Entities” or “Defense Counsel” means Patricia A. Konopka of Stinson LLP.

H. **“Court.”** “Court” refers to the Court having jurisdiction over the Litigation, at any stage; presently the U.S. District Court for the District of Kansas.

I. **“Defendants.”** “Defendants” means the Defendants in the Litigation, VVF Intervest, LLC; VVF Kansas, LLC; and VVF Kansas Services, LLC.

J. **“Effective Date.”** “Effective Date” means the date on which the Judgment becomes a Final Judgment.

K. **“Employer Payroll Taxes.”** “Employer Payroll Taxes” means all taxes and withholdings an employer is required to make arising out of or based upon the payment of employment/wage compensation in this Litigation, including FICA, FUTA, and SUTA obligations.

L. **“Final Approval.”** “Final Approval” means the date the Court enters an Order finally approving the Settlement and dismissing the Litigation against Defendants with prejudice, while still retaining continuing jurisdiction over the administration of the settlement.

M. **“Final Approval Order.”** “Final Approval Order” means an order that finally and unconditionally grants final approval of the Agreement, grants final certification of Settlement Collectives for settlement purposes only, authorizes payments to Named Plaintiff and the Settlement Collective as provided in this Agreement, and fully and finally extinguishes (i) the Released Claims of the Settlement Collectives; and (ii) Released FLSA Claims of the Settlement Collective, as set forth herein. Named Plaintiffs shall submit a draft Final Approval Order, substantially in the form attached hereto as **Exhibit A**, for the Court’s review and approval.

N. **“Final Judgment.”** “Final Judgment” means the latest of: (i) the final affirmance on an appeal of the Judgment, or the expiration of time for a petition for a writ of certiorari to review the Judgment and, if certiorari is granted, the final affirmance of the Judgment following review pursuant to that grant; (ii) the final dismissal with prejudice of the last pending appeal from the Judgment or the final dismissal of any proceeding on certiorari to review the Judgment; or (iii) if no appeal is filed, the expiration of the time for the filing or noticing of any form of valid appeal from the Judgment.

O. **“General Release.”** “General Release” means the General and Comprehensive Release of Claims, substantially in the form attached to this Agreement as **Exhibit B**, to be executed by all Plaintiffs receiving a Service Payment to release the General Released Claims.

P. **“General Released Claims.”** “General Released Claims” means any and all applicable federal, state, and local law claims, obligations, demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever kind and nature, character, and

description, whether in law or equity, whether sounding in tort, contract, statute, or other applicable law, whether known or unknown, and whether anticipated or unanticipated, as detailed in the General Release, substantially in the form attached to this Agreement as **Exhibit B**.

Q.     **“Judgment.”** “Judgment” means the judgment to be rendered by the Court pursuant to this Agreement.

R.     **“Maximum Settlement Fund.”** “Maximum Settlement Fund” means \$215,000, which is the maximum amount that Settling Entities have agreed to pay to fully resolve and settle this Litigation, including any claim for attorneys’ fees and costs approved by the Court; any and all amounts to be paid to Collective Members; the Settlement Administration Costs; and any Court-approved Service Payments. Settling Entities will not be required to pay under this Agreement any more than the gross total of \$215,000 except for the Employer Payroll Taxes, which Settling Entities shall pay independent of and in addition to the Maximum Settlement Fund.

S.     **“Named Plaintiff.”** “Named Plaintiff” means Marlon Robertson.

T.     **“Net Settlement Amount.”** “Net Settlement Amount” means the Maximum Settlement Fund less Collective Action Counsel’s attorneys’ fees and costs, the Service Payments, and the Settlement Administration Costs.

U.     **“Opt-In Plaintiffs.”** “Opt-In Plaintiffs” refers to the Named Plaintiffs and all individuals who filed a Consent to Join form in the Litigation and who will become bound by the Released Claims and Released FLSA Claims portion of the Judgment if the Effective Date occurs.

V.     **“Participation Deadline.”** “Participation Deadline” means the date one hundred and twenty (120) days from the date of the issuance of the Settlement Checks.

W.     **“Parties.”** “Parties” shall refer to the Named Plaintiff and the Settling Entities.

X.     **“Released FLSA Claims.”** “Released FLSA Claims” means any and all FLSA claims that were or could have been asserted based on the facts alleged in the Complaint, whether known or unknown. The Released FLSA Claims include liquidated or punitive damages based on said claims and are intended to include all claims described or identified herein through the final date of execution of this Agreement.

Y.     **“Released Parties.”** “Released Parties” means the Settling Entities and their present and former affiliates, divisions, members, joint venture partners, subsidiaries, parents, predecessors, any merged entity or merged entities and their present and former officers, partners, directors, employees, agents, attorneys, shareholders and/or successors, insurers or reinsurers, employee benefit plans, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them.

Z.     **“Released Claims.”** “Released Claims” means any and all federal, state, and local wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint. The Released Claims include liquidated or punitive damages based on said claims and are intended to include all claims described or identified herein through the final date of execution of this Agreement. Notwithstanding the foregoing, the Released Claims do not include any claims brought under the FLSA. Furthermore, the Releases defined in Paragraphs I.X and I.Z do not apply to any rights or claims that may arise after the final date of execution of this Agreement; nor shall any provision in this Agreement be interpreted to waive or extinguish any benefit, rights, claims, or causes of action which may not be infringed, limited, waived, released or extinguished by private agreement and/or as a result of any law, statute, or ordinance.

AA. **“Service Payments.”** “Service Payments” means the amounts approved by the Court to be paid to Plaintiff Robertson and Plaintiff Deloach as described in Paragraph III.B, in addition to any Settlement Check they receive as a Collective Member, in recognition of their efforts in coming forward as Named Plaintiffs, assisting in the prosecution of the Litigation, or otherwise benefiting the Settlement Classes and Settlement Collectives.

BB. **“Settlement Administration Costs.”** “Settlement Administration Costs” means the fees and costs incurred by the Collective Action Counsel in administering the settlement as described in this Agreement.

CC. **“Settlement Checks.”** “Settlement Checks” means the checks issued to Collective Members for their proportionate share of the Net Settlement Amount calculated in accordance with this Agreement if the Effective Date occurs.

DD. **“Settling Entities.”** “Settling Entities” means Defendants VVF Intervest, LLC; VVF Kansas, LLC; and VVF Kansas Services, LLC

## II. CERTIFICATION OF THE CLASSES AND COLLECTIVES FOR PURPOSES OF SETTLEMENT ONLY

A. The Court previously conditionally certified an FLSA collective. *See* ECF Doc. 34. The stipulations in this Paragraph are made solely for the purposes of this Agreement. The Parties agree that the stipulations and the terms of this Agreement are in no way an admission that collective action certification was proper in this Litigation, and neither the existence nor the terms of this Agreement or the stipulations will be admissible in this or any other action or proceeding as evidence that (i) a determination or admission that any group of similarly situated employees exists to maintain a class action under Rule 23 of the Federal Rules of Civil Procedure (or comparable state laws or rules) or collective action under the FLSA; (ii) an adjudication of the

merits of the Litigation; (iii) Settling Entities are liable to Named Plaintiff and the Collective Employees; or (iv) an adjudication of any other matter released in this Agreement.

### **III. PAYMENTS, SETTLEMENT FUND AND ALLOCATION**

A. Allocation of the Net Settlement Amount: The Net Settlement Amount shall be distributed to every person who filed a Consent to Join on a fair and equitable basis on a pro rata basis associated with each claim. Notwithstanding the foregoing, every person who filed a Consent to Join will be allocated a minimum gross settlement payment of \$10.00.

B. Service Payments. The Service Payments to Named Plaintiff Marlon Robertson shall not exceed the total amount of \$5,000 and to Plaintiff Sampson Deloach shall not exceed \$3,500. The Service Payments are being sought in recognition of Plaintiff Robertson and Plaintiff Deloach's efforts to pursue the claims raised in this Litigation on behalf of the Settlement Collectives, including assisting Collective Action Counsel with the prosecution of this Litigation, and in return for their full and complete release of all claims, in the form of a fully executed General Release attached as **Exhibit B**. If Plaintiff Robertson and Plaintiff Deloach do not execute the General Release, they will not receive the Service Payments.

Settling Entities will not oppose Named Plaintiff's request for the Service Payments. In the event that the Court does not approve the amount of the Service Payments to Plaintiff Robertson and Plaintiff Deloach, the settlement will proceed. This Agreement is not contingent upon the Court's approval of the request for the Service Payments in any amount. This Agreement, as well as the General Release, will be modified to reflect any amount that is approved by the Court. Any amounts allocated as the Service Payments for Named Plaintiffs under this Agreement, but not approved by the Court, shall be added to the Net Settlement Amount.

C. Payment of Attorneys' Fees and Costs. Collective Action Counsel will apply to the Court for approval of attorneys' fees not to exceed the greater of 40% of the Maximum Settlement Fund or 70% of Osman & Smay LLC's Lodestar, plus costs and expenses not to exceed \$15,000. Settling Entities will not oppose such application. In the event that the Court does not approve the amount of the requested attorneys' fees or costs, the settlement will proceed. This Agreement is not contingent upon the Court's approval of the requested attorneys' fees or costs in any amount and will be modified to reflect the amount(s) approved by the Court. Any amounts allocated as attorney's fees or costs under this Agreement, but not approved by the Court, shall be added to the Net Settlement Amount.

D. Release of Claims.

1. Upon the Effective Date, the Collective Members who negotiate their checks shall be deemed to have released, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released FLSA Claims and all Released Claims. Collective Members who do not negotiate their checks will have their claims dismissed without prejudice and will not release any claims

2. Further, upon the Effective Date, Plaintiff Robertson and Plaintiff Deloach shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all General Released Claims as detailed in the General Release, attached as **Exhibit B**.

**IV. THE SETTLEMENT PROCESS**

A. Court Approval of Settlement and Dismissal of Case. As soon as practicable and without undue delay, Named Plaintiff will file a motion with the Court (which Defendants will not oppose) for an order adjudging the terms of this Agreement to be fair, reasonable and adequate; directing the execution of the Agreement's terms and provisions; dismiss the Litigation with prejudice, permanently barring all Collective Members who negotiate their Settlement Checks from prosecuting any of the Released FLSA Claims or Released Claims, and barring Plaintiff Robertson and Plaintiff Deloach from prosecuting any of the Released FLSA Claims, Released Claims or the General Released Claims against any of the Released Parties.

1. The Parties shall provide to the Court for review and approval this Agreement, with exhibits, including (a) the Final Approval Order in substantially the form attached as **Exhibit A**; (b) the General Release, attached as **Exhibit B**; (c) the Closing Letter, attached as **Exhibit C**; and such other information as the Court may request.

2. The Parties shall cooperate and take all necessary steps to effectuate judicial approval of the Agreement. Should the Court not approve the Agreement, or should the Court not approve and enter the Final Approval Order in the form attached as **Exhibit A** (or in a form without any changes by the Court that the Settling Entities deem material), the terms of this Agreement will be null and void, the Parties will retain all rights and defenses in the Litigation, and all negotiations and information and materials pertaining in any way to this Agreement or the settlement of the Litigation will be inadmissible. In such an event, the Parties agree in good faith to negotiate about appropriate revisions and re-submit for the Court's approval. In the event this settlement is never approved by the Court, the Parties will retain all rights and defenses in the Litigation, and all negotiations and information and materials pertaining in any way to this Agreement or the settlement of the Litigation will be inadmissible.

3. Final Approval. The Parties shall make all reasonable efforts to secure entry of the Final Approval Order and the associated Judgment. If the Court rejects their request, fails to enter the Final Approval Order, or fails to enter the Judgment, this Agreement shall be void *ab initio*, and Settling Entities shall have no obligations to make any payments under the Agreement, except for costs already incurred in administering the settlement, which shall be borne equally by, on one hand, Collective Action Counsel and Named Plaintiffs, and the Settling Entities, on the other. At the time the motion is filed requesting Final Approval, Named Plaintiffs and Collective Action Counsel also shall make an application for attorneys' fees and costs and the Service Payments. Notwithstanding any order entered on Named Plaintiffs' and Collective Action Counsel's application for awards to them, under no circumstance shall Settling Entities be required to pay any such awards absent occurrence of the Effective Date.

B. Settlement Administration. Collective Action Counsel will administer the settlement. Reasonable fees and expenses of the Collective Action Counsel in administering the settlement shall be paid from Maximum Settlement Fund. The Parties agree to the following procedure for administration of the settlement.

1. Providing Contact Information.

a. Within 30 days of the Court entering the Final Approval Order, Settling Entities will provide any other information to the Collective Action Counsel regarding the Opt-In Plaintiffs reasonably necessary for the administration of the Agreement. Any and all information, including Social Security Numbers, provided by Settling Entities or Collective Action Counsel shall be held in confidence and shall be used solely for purposes of effectuating this Agreement. This information shall not be disclosed to Named Plaintiffs or Collective Members.

2. Issuance of the Payments under This Agreement.

a. Within 30 days of the Court entering the Final Approval Order, the Defendants shall (1) issue Settlement Checks allocated from the Net Settlement Fund in accordance with Paragraph III.A to Collective Members; (2) deliver the Settlement Checks and Service Payments to the Collective Action Counsel at 7111 W. 151st St., #316 Overland Park, KS 66223 who will be responsible for delivering the Settlement Checks to Collective Members and the Named Plaintiffs by U.S. Mail; and (3) deliver to Collective Action Counsel at Osman & Smay LLC, 7111 W. 151st St., #316 Overland Park, KS 66223, one check in the amount of any Court-approved attorneys' fees and costs, including Settlement Administration Cost..

b. Within 45 days of the Court entering the Final Approval Order, Collective Action Counsel shall mail the Settlement Checks via U.S. Mail to the Collective Members with a Closing Letter attached as Exhibit C.

c. The Settlement Checks shall be valid and negotiable for a period of 120 days from issuance ("Participation Deadline"). Any Settlement Checks that are not cashed or deposited within 120 days from issuance shall become void.

d. If any Collective Member's Settlement Checks are returned to the Collective Action Counsel as undeliverable, the Collective Action Counsel shall promptly undertake reasonable steps including performing a single skip trace to determine the Collective Member's current address and, if an additional address is located, to send the Settlement Checks to the additional address. The Collective Action Counsel and Settling Entities shall have no further obligation to attempt to deliver such undeliverable Settlement Checks.

C. Unclaimed Monies.

1. Any portion of the Net Settlement Amount that is not claimed by Collective Members because those individuals did not timely negotiate their Settlement Checks ("Unclaimed

Monies”), will revert to the Defendants. Collective Members who do not negotiate their Settlement Checks will not release any claims.

D. Tax Treatment of Settlement Checks.

1. For tax purposes, 50% of each Settlement Check shall be treated as back wages, and the other 50% of each Settlement Check shall be treated as interest, any applicable penalties, liquidated damages and other non-wage relief.

2. Payments treated as back wages shall be made net of all applicable employment taxes, including, without limitation, federal, state and local income tax withholding and the employee share of the FICA tax, and shall be reported to the Internal Revenue Service (“IRS”) and other appropriate taxing authorities (together with the IRS, the “Taxing Authorities”) and the payee under the payee’s name and Social Security number on an IRS Form W-2. The employee portion of all applicable income and payroll taxes will be the sole responsibility of the individual Collective Member and shall come out of the Net Settlement Amount. However, payments treated as back wages shall not be made net of any Employer Payroll Taxes, which shall be paid by the Settling Entities independent of and in addition to the Maximum Settlement Fund.

3. Payments treated as liquidated damages shall be made without withholding and shall be reported to the Taxing Authorities and the payee, to the extent required by law, under the payee’s name and Social Security number on an IRS Form 1099.

E. Tax Treatment of Attorneys’ Fees. Within seven calendar days following Final Approval, Collective Action Counsel shall provide Defense Counsel with a duly completed IRS Form W-9. The payments provided by Paragraph III.C shall be considered attorneys’ fees and reported on behalf of Collective Action Counsel to the Taxing Authorities on a Form 1099 issued to Collective Action Counsel.

F. Tax Treatment of Service Payment. The Service Payments paid to Named Plaintiff Robertson and Plaintiff Deloach under this Agreement shall be reported as non-wage income to the Taxing Authorities on a Form 1099 issued to Named Plaintiffs . Within seven calendar days following Final Approval, Collective Action Counsel shall provide Defense Counsel with a duly completed IRS Form W-9 for both Mr. Robertson and Mr. Deloach.

G. Responsibility for Taxes.

1. The Settling Entities are only responsible for the Employer Payroll Taxes arising from the payments under this Agreement. In the event that it is determined by the Taxing Authorities that Collective Action Counsel, Named Plaintiff, and/or any Collective Member owes any additional taxes with respect to any attorneys' fees or costs, any Service Payments, or any Settlement Check distributed under this Agreement, it is expressly agreed that the determination of any tax liability is between Collective Action Counsel, Named Plaintiffs, and/or any Collective Member and the Tax Authorities, and that Settling Entities will not be responsible for the payment of such taxes, including any interest and penalties.

2. Collective Action Counsel, Counsel for the Settling Entities, and Settling Entities make no representations, and it is understood and Named Plaintiff agrees on behalf of Collective Members, that Collective Action Counsel, Counsel for the Settling Entities, and Settling Entities have made no representations, as to the taxability of any portions of the Settlement Check to Named Plaintiff, or any Collective Member, the payment of any costs or award of attorneys' fees to Collective Action Counsel, or any Service Payments. The Settlement Checks will advise Collective Members to seek their own tax advice. Neither Collective Action Counsel nor Counsel for the Settling Entities intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor will it be relied upon as such.

3. Named Plaintiff and/or any Collective Member agree to indemnify and hold harmless Settling Entities and Released Parties for any taxes, penalties, interest, or other amounts due or owing by Settling Entities for any taxes due or owed by Named Plaintiff, and/or any Collective Member on any portion(s) of the Settlement Check to any Named Plaintiff, or any Collective Member, or any Service Payments to Named Plaintiffs. Other than as set forth above, and as required by law, Settling Entities will not make from the payment to Named Plaintiff and/or any Collective Member any deductions, withholdings, or additional payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments, or charity withholdings, and entry of the Final Judgment shall be deemed authority not to make such deductions, withholdings, or additional payments. Any amount paid to Named Plaintiff, and/or any Collective Member shall not create any credit or otherwise affect the calculation of any deferred compensation, benefit, pension, or other compensation or benefit plan provided by Settling Entities.

H. Other Responsibilities of Collective Action Counsel in Administering the Settlement Payment to Collective Members.

1. The Collective Action Counsel shall provide periodic updates to Counsel for Settling Entities regarding any returned Settlement Checks.

2. The Collective Action Counsel shall be responsible for responding to inquiries about the settlement. The Collective Action Counsel and Counsel for Settling Entities will work jointly to attempt to provide a resolution to any issues related to the Settlement Checks.

3. Collective Action Counsel will post information about the Settlement Agreement on its website.

4. In communications to Opt-in Plaintiffs, the Parties will cooperate to facilitate the purposes of the settlement. Any communication between Collective Action Counsel and an Opt-In Plaintiff shall not discuss any other Opt-In Plaintiff's allocation of money pursuant to this Agreement.

#### **V. NON-ADMISSION OF LIABILITY**

This Agreement shall not in any way be construed as an admission by any Settling Entity that it has acted wrongfully with respect to Named Plaintiff, Collective Employees, or to any other person, collectively or individually, and Settling Entities specifically disclaim any liability to or wrongful acts against Named Plaintiff, Collective Employees, or any other person, on the part of the Settling Entities or the Released Parties. Furthermore, the Parties agree that this Agreement does not constitute an adjudication of the merits of the Litigation or any other matters released in this Agreement. Accordingly, the Parties agree that none of them has prevailed on the merits; nor shall this Agreement serve or be construed as evidence that (1) any party has so prevailed; (2) Settling Entities or the Released Parties have engaged in any wrongdoing; (3) VVF Intervest, LLC; VVF Kansas, LLC; and/or VVF Kansas Service, LLC are or were a joint employer of Named Plaintiff, Collective Employee, which VVF Intervest, LLC; VVF Kansas, LLC; and/or VVF Kansas Service, LLC expressly deny; or (4) any claims may or should proceed on a class or collective action basis against any of the Settling Entities or the Released Parties. Nothing in this provision shall prevent the Parties from bringing an action to enforce the terms of this Agreement.

#### **VI. RELEASE OF FEES AND COSTS**

Named Plaintiffs and Collective Action Counsel understand and agree that any fee payments made under Paragraph III.C of this Agreement will be the full, final, and complete payment by Settling Entities of all attorneys' fees and costs arising from or relating to the

representation of Named Plaintiffs, Collective Members, or any other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of the Litigation against Settling Entities. As an inducement to Settling Entities to enter into this Agreement, and as a material condition thereof, Named Plaintiff and Collective Action Counsel hereby irrevocably and unconditionally release, acquit, and forever discharge any claim they may have against the Released Parties for attorneys' fees or costs arising from or relating to the individuals and matters identified in this Paragraph. As a further inducement to Settling Entities to enter into this Agreement, and as a material condition thereof, Named Plaintiff and Collective Action Counsel further understand and agree that the fee and cost payments made pursuant to Paragraph III.C of this Agreement will be the full, final, and complete payment of all attorneys' fees and costs that are released, acquitted, or discharged under this Paragraph. As further inducement to Settling Entities to enter into this Agreement, and as a material condition thereof, Named Plaintiffs and Collective Action Counsel warrant and represent that they will not, nor will any of their employees, agents, or representatives of their firms, file any claims for attorneys' fees or costs against the Released Parties, including, but not limited to, bills of costs or requests for attorneys' fees, arising out of the Litigation, and Named Plaintiffs and Collective Action Counsel hereby irrevocably and unconditionally release, acquit, and forever discharge the Released Parties of any liability for such fees and/or costs. Furthermore, Named Plaintiffs and Collective Action Counsel represent and warrant that they are not aware of any attorney, other than Collective Action Counsel, who has any attorney's fee lien on or claim to any proceeds arising out of, by virtue of, or in connection with the Litigation, and that the terms of this Agreement shall fully satisfy any and all claims by any attorney arising out of or by virtue of or in connection with the Litigation.

## **VII. USE AND RETURN OF DOCUMENTS**

Named Plaintiffs and Collective Action Counsel agree to return and/or destroy all documents and materials designed as “Confidential” pursuant to the Parties’ agreed Protective Order (ECF Doc. 30) and those produced in conjunction with the Parties’ mediation or other settlement negotiations in the matter. All originals, copies, and summaries of documents, presentations, and data provided to Collective Action Counsel by Settling Entities in connection with the mediation or other settlement negotiations in this matter, including e-mail attachments containing such materials, may be used only with respect to this settlement, or any dispute between Collective Members and Collective Action Counsel regarding the settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule.

## **VIII. COURT RETAINS JURISDICTION TO ENFORCE AGREEMENT**

The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, to the extent permitted by law, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Agreement. This retention of jurisdiction encompasses any disagreement among the Parties concerning the final forms of any documents necessary to implement this Agreement, and all other disputes regarding the Agreement and its implementation. Any action to enforce this Agreement shall be commenced and maintained only in this Court.

## **IX. GOVERNING LAW**

This Agreement is made and entered into in the State of Kansas and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Kansas. Any legal action relating to this Agreement shall be brought in this Court before Judge Eric F. Melgren or any judge presiding in his stead.

## **X. COOPERATION CLAUSE**

The Parties agree to cooperate to effectuate the settlement of the Litigation, including securing the Court's approval of the Agreement, assisting with the administration of the settlement in accordance with the terms of this Agreement, and obtaining a final dismissal. The Parties further agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the terms and conditions of the Agreement, including but not limited to obtaining the dismissal, transfer to the Court, or stay of any pending or subsequently-filed class or collective action lawsuit that alleges any of the claims covered by the releases herein.

## **XI. ASSIGNMENTS**

Named Plaintiff and Collective Action Counsel represent that they have not assigned or transferred, or purported to assign or transfer, to any person or entity any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action.

## **XII. NO REPRESENTATIONS FROM SETTLING ENTITIES**

Named Plaintiff and Collective Action Counsel represent and acknowledge that, in executing this Agreement or the General Release, they do not rely and have not relied upon any representation or statement made by Settling Entities or by any of their respective agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement.

## **XIII. RIGHT TO WITHDRAW**

Settling Entities shall have the right to withdraw from, and void *ab initio*, this Agreement at any time prior to the Effective Date upon the occurrence of any one of the following events: (i) Settling Entities are required to pay more than Maximum Settlement Fund, plus the Employer

Payroll Taxes; or (ii) the Court otherwise issues an Order inconsistent with any of the terms of this Agreement.

#### **XIV. BINDING AGREEMENT**

This Agreement shall be binding upon the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of Settling Entities and to their respective heirs, administrators, representatives, executors, successors, and assigns.

#### **XV. ARM'S LENGTH TRANSACTION; MATERIALITY OF TERMS**

The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement.

#### **XVI. SEVERABILITY**

So long as the purpose of this Agreement is not impaired, should any clause, sentence, provision, Paragraph, or part of this Agreement be adjudged by any court of competent jurisdiction, or be held by any other competent governmental authority having jurisdiction, to be illegal, invalid, or unenforceable, such judgment or holding shall not affect, impair, or invalidate the remainder of this Agreement, but shall be confined in its operation to the clause, sentence, provision, Paragraph, or part of the Agreement directly involved, and the remainder of the Agreement shall remain in full force and effect.

#### **XVII. WAIVERS, ETC. TO BE IN WRITING**

No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's Final Approval of this Agreement, shall be valid or

binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

### **XVIII. CAPTIONS**

The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

### **XIX. CONSTRUCTION**

The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.

### **XX. SOLE AND ENTIRE AGREEMENT**

This Agreement, including Exhibits A, B, and C attached hereto, set forth the entire agreement between the Parties hereto. This Agreement fully supersedes any and all prior oral or written agreements or understandings between the Parties hereto pertaining to the subject matter hereof. This Agreement may only be modified in writing.

### **XXI. EXTENSIONS OF TIME**

If any deadlines related to this Agreement cannot be met, Collective Action Counsel and Counsel for Settling Entities shall meet and confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Agreement. In the event that the Parties fail to reach such agreement, any of the Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Agreement.

## **XXII. FACSIMILE/ELECTRONIC SIGNATURES**

Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.

## **XXIII. THIRD PARTY BENEFICIARIES**

The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto; but this Agreement is not designed to and does not create any third party beneficiaries other than third parties that are identified as Released Parties as defined in this Agreement.

## **XXIV. COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**NAMED PLAINTIFF:**

DATED: 7/6/2023

By:   
Marlon Robertson  
DA3A56201FE44D0...  
Marlon Robertson

**SETTLING ENTITIES:**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Intervest, LLC

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Kansas, LLC

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Kansas Services, LLC

**COLLECTIVE ACTION COUNSEL  
AS TO FORM:**

DATED: 7/7/2023

OSMAN & SMAY, LLC  
  
Matthew Orman  
ABBBF01CD84E44C...

**NAMED PLAINTIFF:**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Marlon Robertson

**SETTLING ENTITIES:**

DATED: 7/7/2023

By: Kurussi Amelie  
VVF Intervest, LLC

DATED: 7/7/2023

By: Kurussi Amelie  
VVF Kansas, LLC

DATED: 7/7/2023

By: Kurussi Amelie  
VVF Kansas Services, LLC

**COLLECTIVE ACTION COUNSEL  
AS TO FORM:**

DATED: \_\_\_\_\_

OSMAN & SMAY, LLC

By: \_\_\_\_\_

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

<b>MARLON ROBERTSON, individually,</b>	)
<b>and on behalf of all others similarly</b>	)
<b>situated,</b>	)
	)
<b>Plaintiff,</b>	)
	)
	)
<b>v.</b>	)
	)
	)
<b>VVF INTERVEST, LLC, VVF KANSAS,</b>	)
<b>LLC, &amp; VVF KANSAS SERVICES, LLC,</b>	)
	)
<b>Defendants.</b>	)

**Case No. 2:21-cv-02507**

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF COLLECTIVE ACTION SETTLEMENT**

On \_\_\_\_\_, 2023, the Court heard a motion for final approval of a settlement of a class and collective action by Plaintiff Marlon Robertson (“Named Plaintiff”), on behalf of himself and all others similarly situated, and Defendants VVF Intervest, LLC; VVF Kansas, LLC; and VVF Kansas Services, LLC (collectively, “Defendants” or “Settling Entities”). The Court has considered the Plaintiff’s Unopposed Motion for Final Approval of Collective Action Settlement and other related materials submitted by the Parties, as well as the Parties’ presentation at the hearing on final approval, and otherwise being fully informed in the premises, hereby finds and orders as follows:

1. Unless otherwise defined herein, all terms used in this Order (the “Final Approval Order”) will have the same meaning as defined in the Settlement Agreement.
2. The Court has jurisdiction over the subject matter of this Litigation pursuant to 28 U.S.C. §§ 1331, 1332, and 1367, including jurisdiction over all members of the Settlement Collective.
3. The Court certifies, for settlement purposes only, the following Settlement

Collectives pursuant to the Settlement Agreement and 29 U.S.C. § 216(b):

All current and former non-exempt hourly employees who were employed by Defendants at its Kansas facilities any time from November 2, 2018 through December 31, 2022.

4. The Court finds that the resolution of the Fair Labor Standards Act (“FLSA”) claims represents a fair and reasonable resolution of a *bona fide* dispute.
5. This Court grants final approval of the Settlement.
6. Collective Members shall receive their settlement shares according to the allocation formula and procedures set forth in the Settlement Agreement. Any portion of the Net Settlement Amount that is not claimed by Collective Members because those individuals did not timely negotiate their Settlement Checks will revert back to the Defendants.
7. The Service Payments of \$3,500 to Plaintiff Marlon Robertson and \$2,500 to Plaintiff Sampson Deloach from the Maximum Settlement Fund are approved.
8. Plaintiff’s Counsel is awarded \$86,000 for attorneys’ fees and \$13,655 for costs and expenses (inclusive of cost of settlement administration in the amount of \$800) and will receive such payment from the Maximum Settlement Fund according to the procedures set forth in the Settlement Agreement.
9. Within 30 days of the date of this Order, Defendants are ordered to issue Settlement Checks to the Collective Members.
10. Within 30 days of the date of this Order, Defendants are ordered to deliver to Plaintiff’s Counsel: (1) the Settlement Checks to the Collective Members; (2) Service Payments; and (3) Plaintiff’s Counsel’s attorneys’ fees, expenses, and cost, including Settlement Administration Cost.
11. Within 45 days of the date of this Order, Plaintiff’s Counsel shall mail the

Settlement Checks via U.S. Mail to the Collective Members. Settlement Checks that are not negotiated within 120 days of issuance shall become void.

12. Neither this Order, the Settlement Agreement, nor any other documents or information relating to the settlement of this Litigation shall constitute, be construed to be, or be admissible in this Litigation or any other proceeding as evidence: (a) that any group of similarly situated or other employees exists to maintain a collective action under the Fair Labor Standards Act, or a class action under Rule 23 of the Federal Rules of Civil Procedure, or comparable state laws or rules; (b) of an adjudication of the merits of this Litigation; (c) of an adjudication of any of the matters subject to the Releases in the Settlement Agreement; (d) that any party has prevailed in this case; (e) that the Settling Entities, or the Released Parties have engaged in any wrongdoing; or (f) that Defendants are an employer or joint employer of Named Plaintiff, Collective Employee, or anyone else.

13. This matter is dismissed with prejudice as to Collective Members who negotiate their Settlement Checks within 120 days of issuance.

14. This matter is dismissed without prejudice as to Collective Members who fail to negotiate their Settlement Checks within 120 days of issuance.

15. Except as provided in the Settlement Agreement, each Party shall bear its own attorneys' fees, expenses, and costs.

16. The Clerk is directed to enter judgment consistent with this Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2023

---

JUDGE ERIC F. MELGREN  
UNITED STATES DISTRICT COURT

# EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF KANSAS**

<b>MARLON ROBERTSON, individually,</b>	)	
<b>and on behalf of all others similarly</b>	)	
<b>situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 2:21-cv-02507</b>
	)	
<b>VVF INTERVEST, LLC, VVF KANSAS,</b>	)	
<b>LLC, &amp; VVF KANSAS SERVICES, LLC,</b>	)	
	)	
<b>Defendants.</b>	)	

**GENERAL AND COMPREHENSIVE RELEASE OF CLAIMS**

This General and Comprehensive Release of Claims (“General Release”) is made and entered into by and between \_\_\_\_\_ (“Plaintiff”), on the one hand, and VVF Intervest, LLC; VVF Kansas, LLC; and VVF Kansas Services, LLC (collectively, “Settling Entities”), on the other.

**WHEREAS**, Plaintiff either filed or significantly participated in the lawsuit entitled *Robertson et al. v. VVF Intervest, LLC, et al.*, Case No. 2:21-cv-02507, currently pending in U.S. District Court for the District of Kansas (the “Litigation”).

**WHEREAS**, the Settling Entities deny and continue to deny all of the allegations made by Plaintiff, and deny and continue to deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action alleged, or that any claims asserted by Plaintiff may proceed on a class or collective action basis. Nonetheless, without admitting or conceding any arguments, issues, liability, or damages whatsoever, including that VVF Intervest, LLC; VVF Kansas, LLC; and/or VVF Kansas Service, LLC are or were a joint employer of Plaintiff has attempted to bring claims, or that any claims alleged may proceed on a class or collective action basis, the Settling Entities have agreed to settle the claims on the terms and conditions set forth in the “Collective Action Settlement Agreement” (the “Settlement Agreement”) to avoid the burden and expense of continuing to defend against litigation;

**WHEREAS**, through their respective counsel, Plaintiff and the Settling Entities have signed a Settlement Agreement for the purpose of settling the Litigation on behalf of Named Plaintiff and other certain employees of Settling Entities;

**WHEREAS**, Paragraph III.B of the Settlement Agreement provides that Plaintiff will apply to the Court to receive compensation in the amount of \$\_\_\_\_\_ (“Service Payment”) for the service he rendered to Collective Employees (as defined in the Settlement Agreement);

**WHEREAS**, Paragraph III.B of the Settlement Agreement provides that Plaintiffs, receiving a Service Payment, will release claims against the Released Parties (defined in the Settlement Agreement) as set forth in this General and Comprehensive Release of Claims;

**NOW, THEREFORE**, after having had an opportunity to consult with his counsel, and in consideration of receiving a Service Payment as set forth in the Settlement Agreement, Named Plaintiff agrees to the following:

1. **Consideration.** Per Paragraphs III.B and IV.F of the Settlement Agreement, Plaintiff will receive a Service Payment of \$\_\_\_\_\_ which shall be deemed non-wage compensation in its entirety and paid by the Settlement Administrator within 30 days of the Court granting Final Approval.

2. **Release of Claims.** In exchange for the Service Payment described in the Consideration clause, Plaintiff hereby waives all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, charges, complaints and demands capable of being waived that may otherwise be available under federal, state or local law against the Settling Entities and their present and former affiliates, divisions, members, joint venture partners, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, attorneys, shareholders and/or successors, insurers or reinsurers, employee benefit plans, assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them arising out of Plaintiff's employment with any Settling Entity or the termination of that employment ("Released Parties"), including but not limited to all claims arising under the Americans with Disabilities Act, the Civil Rights Act of 1991, the Employee Retirement Income Security Act, the Equal Pay Act, the Genetic Information Non-discrimination Act, the Family and Medical Leave Act, the Fair Labor Standards Act, Section 1981 of U.S.C. Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866, 1871 and 1991, the National Labor Relations Act, the Occupational Safety and Health Act of 1970, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Sarbanes-Oxley Act of 2002, the Worker Adjustment and Retraining Notification Act, Missouri Minimum Wage Law, Kansas Minimum Wage and Maximum Hours Law, as well as wrongful termination claims, breach of contract claims, discrimination claims, harassment claims, retaliation claims, whistleblower claims (to the fullest extent they may be released under applicable law), defamation or other tort claims, and claims for attorneys' fees and costs.

3. Plaintiff does not waive any right to file an administrative charge with the Equal Employment Opportunity Commission ("EEOC"), subject to the condition that he or she agrees not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom. Nor does Named Plaintiff release any claim for breach of the terms of the Settlement Agreement.

4. This General Release is intended to include in its effect all claims identified above through the date of execution of the Settlement Agreement (and as set forth in Paragraph I.O of the Settlement Agreement), including claims that Plaintiff does not know or suspect to exist in his or her favor against Released Parties. Plaintiff agrees and acknowledges that he has had the

opportunity to seek the advice of counsel, and that this is a knowing and voluntary waiver. Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he or she may otherwise have had relating to the claims identified in this General Release (and as set forth in Paragraph I.O of the Settlement Agreement).

**5. Medicare Disclaimer.** Named Plaintiff represents that he or she is not a Medicare Beneficiary as of the time Named Plaintiff enters into this General Release.

**6. Sexual Harassment or Sexual Abuse Disclaimer.** Named Plaintiff acknowledges that he or she has not made any claims or allegations related to sexual harassment or sexual abuse, and that none of the payment set forth in this General Release is related to sexual harassment or sexual abuse.

**7. Other Claims Disclaimer.** Plaintiff represents that he or she does not have knowledge of any facts that would give rise to a claim under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and any other securities laws, or that would violate any of the policies or procedures of any Settling Entity. Plaintiff further represents that other than the Litigation, he or she has not filed any claims, complaints, administrative actions, or actions of any other kind against any Settling Entity with any court of law, or local, state, or federal government or agency.

**8. Limit on Disclosures.** Plaintiff shall not, directly or indirectly, issue or cause to be issued any statements to the media or engage in any other publicity regarding the Settlement Agreement or the General Release, nor shall Plaintiff issue any notice of the settlement except for the Settlement Notices issued through the Collective Action Counsel, if any, as set forth in the Settlement Agreement. Plaintiff shall not, directly or indirectly, issue a press release, hold a press conference, publish information about the settlement or the settlement negotiations on any social media application, e-mail correspondence, website, or otherwise publicize the Settlement Agreement or negotiations. Plaintiff agrees not to respond to any press inquiries concerning the settlement except to refer reporters to the papers filed with the U.S. District Court for the District of Kansas. Collective Action Counsel is permitted to communicate the terms of the Settlement Agreement to Collective Members and post information about the Settlement Agreement, the Settlement Agreement, and court filings related to the approval of the Settlement Agreement on its website.

**9. Reports to Government Entities.** Nothing in this General Release shall prohibit or restrict Plaintiff, from: (i) providing information to or cooperating with Congress, the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the Consumer Financial Protection Bureau (“CFPB”), the EEOC, the Occupational Safety and Health Administration (“OSHA”), the National Labor Relations Board (“NLRB”), Department of Justice (“DOJ”) or any other federal, state, or local government, regulatory, or law enforcement agency (“Government Agencies”), the Financial Industry Regulatory Authority (“FINRA”) or the “New York Stock Exchange, Inc. (“NYSE”), or any other self-regulatory organization (“SRO”); (ii) reporting to any of the Released Parties’ management or directors regarding conduct the employee believes to be in violation of the law or prohibits or restricts the employee from providing information to or cooperating with any Government Agencies or any SROs; (iii) communicating with any Government Agencies or SRO or otherwise participating in any investigation or

proceeding that may be conducted by any Government Agency or SRO, including providing documents or other information; or (iv) receiving an award for information provided to any Government Agencies other than for charges filed with the EEOC or corresponding state or local agency as set forth above.

10. Plaintiff may also disclose confidential information, including trade secrets, to (a) any government, regulatory or self-regulatory agency, including under Section 21F of the Securities and Exchange Act of 1934, Section 23 of the Commodity Exchange Act of 1936, or Section 7 of the Defend Trade Secrets Act of 2016 (“Defend Trade Secrets Act”) and the rules thereunder, or (b) an attorney in connection with the reporting or investigation of a suspected violation of law or to an attorney or in a court filing under seal in connection with a retaliation or other lawsuit or proceeding, as permitted under the Defend Trade Secrets Act. Plaintiff does not need the prior authorization of the Settling Entities to make these disclosures or provide evidence or other information to any government, regulatory, or self-regulatory agency, and Named Plaintiff is not required to notify the Settling Entities that he or she has done so.

11. **Non-Acknowledgment of Liability.** Nothing relating to this General Release, or any communications, papers, or orders related to the Settlement Agreement, shall be cited to as, construed to be, admissible as, or deemed an admission by the Settling Entities or Released Parties of any liability, culpability, negligence, or wrongdoing toward the Plaintiff, Collective Employees, or any other person, and the Settling Entities and Released Parties specifically disclaim (i) any liability, culpability, negligence, or wrongdoing toward the Plaintiff, Collective Employees, or any other person; (ii) that class or collective action certification is appropriate in this or any other matter; or (iii) that any Settling Entity is an employer or joint employer of Plaintiff, Collective Employees, or anyone they seek to represent in the Litigation. Each of the Parties has entered into the Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. This General Release, and any communications, papers, or orders related to the Settlement Agreement, may not be cited to, used, or admitted as evidence (i) of liability; (ii) that class or collective action certification is appropriate; or (iii) that any Settling Entity is an employer or joint employer of anyone. There has been no determination by any court as to (i) the merits of the claims asserted by Plaintiff against the Settling Entities; (ii) whether a class or collective should be certified, other than for settlement purposes only; or (iii) whether Pinnacle is an employer or joint employer of anyone, including Plaintiff or Collective Employees.

12. **No Other Amounts Due.** Plaintiff acknowledges that the Settling Entities have paid Plaintiff all wages, salaries, bonuses, benefits, and other amounts earned and accrued, less applicable deductions, and that the Settling Entities have no obligation to pay any additional amounts other than the Service Payment described in the Consideration Clause of this General Release and the Settlement Check to which Named Plaintiff is entitled pursuant to the allocation formula in Paragraph III.A of the Settlement Agreement.

13. **Release for Age Claims.** In addition to all other claims released for the payment described in the Consideration clause, Plaintiff hereby waives all claims available against the Settling Entities arising out of Plaintiff’s employment under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act. Plaintiff acknowledges and agrees

that \$500.00 was included within the Service Payment in exchange for his or her release of the Age Claims described in this Paragraph.

**14. Acknowledgement of Voluntariness and Time to Review.** Plaintiff acknowledges that:

- He has read this General Release and understands it;
- He is signing this General Release voluntarily in order to release his claims against the Released Parties in exchange for payment that is greater than he or she would otherwise have received;
- He was offered at least 21 days to consider his or her choice to sign this Agreement;
- The Settling Entities have advised Plaintiff to consult with an attorney; and
- Plaintiff knows that the Release for Age Claims described in Paragraph 13 may be revoked within 7 days of signing this Agreement and that the Release for Age Claims does not become effective until the 7-day period has passed. To revoke the Release for Age Claims, contact Patricia A. Konopka (pat.konopka@stinson.com). If Plaintiff exercises his right to revoke the Release For Age Claims, the Service Payment shall be reduced by \$500.00. Revocation of the Release for Age Claims shall have no effect on the Release of Claims described in Paragraph 2 of this Agreement. Plaintiff has no right to revoke his or her agreement to any other term or condition set forth in this Agreement.

**15. Governing Law.** This General Release shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Kansas, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

**16. Severability.** Should any clause, sentence, provision, paragraph, or part of this General Release or the Settlement Agreement be adjudged by any court of competent jurisdiction, or be held by any other competent governmental authority having jurisdiction, to be illegal, invalid, or unenforceable, such judgment or holding shall not affect, impair, or invalidate the remainder of this General Release or the Settlement Agreement, but shall be confined in its operation to the clause, sentence, provision, paragraph, or part of this General Release or the Settlement Agreement directly involved, and the remainder of the General Release and/or the Settlement Agreement shall remain in full force and effect.

The Settling Entities hereby advise Plaintiff to consult with an attorney prior to signing this General Release. Plaintiff acknowledges that he or she has had a reasonable amount of time to consider the terms of this General Release and Plaintiff signs it with the intent to be legally bound.

**WE AGREE TO THESE TERMS.**

**PLAINTIFF:**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

**SETTLING ENTITIES:**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Intervest, LLC

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Kansas, LLC

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
VVF Kansas Services, LLC

# **EXHIBIT C**



August \_\_\_\_, 2023

**VIA U.S. MAIL**

7111 W. 151st St. #316

Re: *Robertson et al. v. VVF Intervest, LLC, et al.*, Case No. 2:21-cv-02507 Overland Park, KS 66223

T: 913.667.9243

F: 866.470.9243

Dear \_\_\_\_:

You are receiving this letter and the enclosed Settlement Checks because you are a current or former non-exempt hourly employee of VVF Intervest, LLC, VVF Kansas, LLC and/or VVF Kansas Service, LLC (collectively "VVF") at their facility in Kansas at some time between the dates of November 2, 2018 through December 31, 2022, and you have filed a Consent to Join this lawsuit.

**This letter is to inform you of the settlement.** The Parties have agreed to settle the claims to avoid costly litigation. The Court has approved the Parties' settlement. The Court has not decided which side is right in this lawsuit. If you received this letter on behalf of a Settling FLSA Collective Member who is deceased, you should provide this letter to the authorized legal representative of that Settling FLSA Collective Member.

**You do not have to do anything to participate in the settlement.** You have already submitted a Consent to Join the litigation whereby you agreed to be bound by decisions made by the Named Plaintiff, including settlement. You are receiving a settlement payment and you will waive and release certain claims you may have against VVF, as set forth in the Settlement Agreement.

You are receiving the enclosed checks, which are your portion of the settlement. This sum is intended to compensate you for all claims in the lawsuit. Each settling Collective Member is receiving an amount equal to approximately 71% of the total amount of their alleged damages. For tax purposes, 50% of each Collective Member's payment will be treated as wages with applicable federal, state, and local income tax and FICA withholdings and the remaining 50% will be treated as non-wage income. VVF will issue you an IRS Form W-2 for the wage portion of the settlement and an IRS Form 1099 for the non-wage portion of the settlement. Neither Plaintiff's counsel nor VVF will provide any tax advice and you are encouraged to seek advice from a tax professional.

Each Settling FLSA Collective Member who cashes their Settlement Checks, on his or her behalf, and on behalf of his or her respective current, former and future heirs, assigns, spouses, executors, administrators, agents, and attorneys, shall fully release and discharge VVF of all federal, state, and local wage and hour claims arising from his or her employment (or alleged employment or joint employment) with any of the Releasees, specifically including, but not limited to, claims under the FLSA and state laws on wage and hour claims.

Plaintiffs' counsel represented your interests in reaching a settlement. Separate from and in addition to the amounts paid to Settling FLSA Collective Members, VVF has agreed to pay a portion of Plaintiffs' attorneys' fees and costs in prosecuting this matter. You will not be charged by Plaintiffs' counsel. Plaintiffs' counsel in this lawsuit is: Matthew E. Osman and David Kim at Osman & Smay LLC. More information about Osman & Smay LLC and the settlement is available at [www.workerwagerights.com/cases-investigations/vvfcollectiveaction/](http://www.workerwagerights.com/cases-investigations/vvfcollectiveaction/).

This letter is only a summary of the Settlement and your rights. If you have any questions concerning the settlement you may contact Osman & Smay LLC at 913-667-9243. **Do not contact the Court if you have questions about the settlement or this letter.** Upon the negotiation of the enclosed Settlement Checks or the expiration of the 120 days from the issuance of the Settlement Check, we will close your file and will no longer represent you. If you have any questions or would like a copy of your file, please contact us. We greatly appreciate working with you and hope will call us again with any legal issues or refer any family or friends to our office. Please do not hesitate to contact us with any questions.

Sincerely,

Matthew E. Osman