

NOTICE OF SETTLEMENT
IN WYNN TIP POOLING CASES

Re: *Cesarz, et al. v. Wynn Las Vegas, LLC, et al.*, United States District Court for the District of Nevada, Case No. 2:13-cv-109-APG-DJA, and *Tang, et al. v. Wynn Las Vegas, LLC, et al.*, United States District Court for the District of Nevada, Case No. 2:18-cv-891-APG-DJA

ATTN: <<EmployeeName>>

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

I. SUMMARY OF THE SETTLEMENT

Settlement has been reached in the two related tip sharing cases against the Wynn Las Vegas, LLC (Wynn) and its co-Defendants: *Cesarz, et al. v. Wynn Las Vegas, LLC, et al.*, United States District Court for the District of Nevada, Case No. 2:13-cv-109-RCJ-CWH (“Cesarz Action”), and *Tang, et al. v. Wynn Las Vegas, LLC, et al.*, United States District Court for the District of Nevada, Case No. 2:18-cv-891-APG-GWF (“Tang Action”).

The Total Settlement Amount is \$5.6 million. The Net Settlement Amount available for distribution is at least \$4,150,000.00, which is the Total Settlement Amount of \$5.6 million minus (i) attorneys’ fees of \$1.4 million, (ii) actual litigation costs of up to \$10,000 (including approximately \$4,000 to the Settlement Administrator in connection with the motion for withdrawal), (iii) Service Awards to Lead Plaintiffs Joseph Cesarz and Quy Ngoc Tang of \$10,000 each, and (iv) Settlement Administrator fees of \$20,000. This Settlement was reached with the assistance of a mediator with the United States Court of Appeals for the Ninth Circuit.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE EITHER PREVIOUSLY
AGREED TO BE A PLAINTIFF AND FILED A CLAIM IN THE *CESARZ* AND/OR
TANG ACTIONS OR ARE INCLUDED AS A COLLECTIVE ACTION MEMBER IN
THE PROPOSED SETTLEMENT AND ARE ENTITLED TO PARTICIPATE IN THAT
SETTLEMENT**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:
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<p>A. Accept the Settlement Within 60 Days of April 16, 2021</p> <p>Your minimum payment from the proposed Settlement: \$«TotalAmount».</p>	<p>You will receive a cash payment from the Settlement, provided that you sign and submit the enclosed Settlement Offer and Release Form no later than 60-days from the mailing of this Notice. By signing the enclosed Settlement Offer and Release Form you will receive a cash payment and you will be giving up your wage-and hour claims against the Wynn and any claims regarding the tip pool.</p>
<p>B. Reject the Settlement</p>	<p>You will not receive a cash payment from the Settlement if you do not sign and submit the enclosed Settlement Offer and Release Form and you will not give up your claims against the Wynn. However, if you want to pursue further legal action against the Wynn, you will need to take further action on your own behalf and cannot rely upon the attorneys representing the dealers in this case to pursue any claim against the Wynn for you. Your legal claims will be put on hold (stayed) for 30 days after the Effective Date (defined below) of the Settlement; after 30 days, the statute of limitations will begin to run.</p>
<p>C. Do Nothing</p>	<p>You will not receive a cash payment from the Settlement if you take no affirmative action—i.e., do nothing. You will not release any of your claims against the Wynn but you must take further legal action on your own behalf and at your own expense if you wish to pursue your claim. You must do so within 30 days after the Effective Date (defined below) of the Settlement.</p> <p>You may, however, claim your allotted Settlement cash payment up to 365 days after the Effective Date by signing and submitting the enclosed Settlement Offer and Release Form.</p>

II. BACKGROUND ABOUT THE *CESARZ* AND *TANG* ACTIONS AND CLAIMS

On January 21, 2013, Joseph Cesarz and Quy Ngoc Tang filed a putative opt-in collective action complaint on behalf of themselves and other similarly situated dealers, styled *Cesarz v. Wynn Las Vegas, LLC*, 2:13-cv-00109, against Defendant Wynn Las Vegas, LLC (“Wynn” or “Defendant”), alleging that Wynn violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) because boxmen and Casino Service Team Leads (“CSTLs”) were included in the tip pool. In bringing the suit, Plaintiffs relied exclusively on 2011 regulations issued by the United States Department of Labor regarding tip pooling. In 2016, a divided panel of the Ninth Circuit reversed the district court’s first order dismissing the Appellants’ complaint. *Or. Rest. & Lodging Ass’n v. Perez* (“*ORLA*”), 816 F.3d 1080 (9th Cir. 2016). Writing for the majority, Judge Pregerson deferred to the 2011 Department of Labor regulations. While Wynn’s petition for a writ of certiorari to the Supreme Court was pending, Congress amended the FLSA and stated that the 2011 regulations would have “no further force or effect.” 2018 Appropriations Act, Div. S § 1201(c). The Parties dispute the meaning of that provision. But the district court agreed with Defendant, ruling that entry of any judgment against Wynn would give impermissible “further force or effect” to the 2011 regulations and dismissed the lawsuit for the second time. *Cesarz v. Wynn Las Vegas LLC*, No. 13- cv-1009, 2019 WL 237389, at *1 (D. Nev. Jan. 13, 2019). Plaintiffs have filed a Notice of Appeal regarding that decision. *See* Case No. 19-15166 (9th Cir.). The appeal in the Cesarz Action is currently stayed pending this settlement.

(During the pendency of their first appeal, Plaintiffs filed a separate action, styled *Doe v. Wynn Las Vegas, LLC*, 2:16-cv-00482-JCM-NJK, which was consolidated with the *Cesarz* Action.)

On May 16, 2018, Quy Ngoc Tang and Joseph Cesarz filed the Tang putative opt-in collective action complaint on behalf of themselves and other similarly situated dealers, styled *Tang v. Wynn Las Vegas, LLC*, 2:18-cv-00891, against Defendant Wynn Las Vegas, LLC, alleging that Wynn violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b) (as amended by the 2018 Appropriations Act as effective on March 23, 2018) because boxmen and Casino Service Team Leads (“CSTLs”) were included in the tip pool. The case was stayed pending settlement discussions.

On May 9, 2019, the Parties engaged in mediation with Ninth Circuit mediator Steven Saltiel. The Parties reached a settlement-in-principle, executed a Memorandum of Understanding, and subsequently entered into this proposed Settlement. On March 26, 2021 the United States District Court for the District of Nevada, in the *Tang* Action entered an Order approving the Settlement's terms as fair and reasonable and finding that the Settlement should proceed. This means unless the Settlement is voided by the Wynn as provided for *infra* at III(F) the Settlement will become binding and a final judgment will be entered dismissing the *Tang* Action pursuant to the Settlement's terms.

III. DETAILED SETTLEMENT TERMS

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.wynndealerssettlement.com, by contacting counsel at attorney@wynnlawsuit.com or viewing information available at wynnlawsuit.com, by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.nvd.uscourts.gov/cgi-bin/login.pl>, or by visiting the office of the Clerk of the Court for the United States District Court for the District of Nevada, located at 333 S. Las Vegas Blvd, Las Vegas, Nevada, 89101, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

A. Total Settlement Amount. Defendant has agreed to pay a maximum amount of \$5,600,000 (the “Total Settlement Amount”) to fund the Settlement. The Total Settlement Amount includes (i) the payment of all cash payments to plaintiffs and collective action members, (ii) attorneys’ fees of \$1,400,00 (which is 25% of the Total Settlement Amount) for all the work performed on this case and for prosecuting this action on a contingency fee basis (that is, without being paid any money to date), (iii) litigation costs that have been paid out of pocket by the attorneys of up to \$10,000, (iv) Service Awards to Lead Plaintiffs Joseph Cesarz and Quy Ngoc Tang of \$10,000 each for the risks and all the work that they performed on behalf of all plaintiffs, and (v) Settlement Administrator fees of \$20,000.

B. Net Settlement Amount. The “Net Settlement Amount” available for distribution to all plaintiffs and collective action members is the Total Settlement Amount minus (i) attorneys’ fees, (ii) actual litigation costs, including approximately \$4,000 to the Settlement Administrator in connection with the motion for withdrawal) (iii) Service Awards to Lead Plaintiffs Joseph Cesarz and Quy Ngoc Tang, and (iv) Settlement Administrator fees of \$20,000. The Net Settlement Amount available for distribution to plaintiffs will be at least \$4,150,000. Calculation of Settlement Payments. The Net Settlement Amount available for distribution to plaintiffs will be allocated as follows:

- (1) **Allocation between Cesarz and Tang Claims.** Seventy percent (70%) of the Net Settlement Amount will be allocated the *Tang* Claims and thirty percent (30%) of the Net Settlement Amount will be

allocated to the *Cesarz* Claims. The estimated Net Settlement Amount allocated to the *Tang* Claims is \$2,905,000. The estimated Net Settlement Amount allocated to the *Cesarz* Claims is \$1,245,000. This respective allocation is based upon the procedural posture of the cases and Plaintiffs' Counsels' relative assessment of the strengths and weaknesses of each group of Claims; and

(2) **Pro Rata Distribution based on Tips.** Each plaintiff's settlement award will be based on pro rata assessment of tips received by each plaintiff, for the *Cesarz* claims as adjusted for each plaintiff's applicable relevant time period, in comparison to the total amount of tips received by all plaintiffs during the relevant time period applicable to each group of Claims. The relevant time period in the *Tang* Claims is March 23, 2018 to November 11, 2018 For the *Cesarz* Claims the relevant time period is the date three years prior to the date you filed with the Court a written consent to join the *Cesarz* Action but not earlier than May 1, 2011 and ending on March 22, 2018. If you have not previously filed a consent to join the *Cesarz* Action the relevant time period that will apply to your *Cesarz* Claim will be January 31, 2017 through March 22, 2018. Some plaintiffs and collective action members worked during the time period of both groups of Claims and will receive two (2) separate settlement awards.

YOUR ESTIMATED SETTLEMENT SHARE:

***Tang* Claims:** Defendant's records reflect that you received <<Tang_PercentInterest>> of the total tips **distributed to Wynn table games dealers** during the *Tang* time period. Based on this information, your estimated Settlement Share for the *Tang* Claims is «TangAmount».

***Cesarz* Claims:** Defendant's records reflect that you received <<Cesarz_PercentInterest>> of the total tips distributed to Wynn table games dealers during the *Cesarz* time period as limited by the *Cesarz* claims calculated for all *Cesarz* plaintiffs and collective action members Based on this information, your estimated Settlement Share for the *Cesarz* Claims is «CesarzAmount».

C. **Release of Claims.** All plaintiffs and collective action members (referred to in the rest of this paragraph as "Plaintiff") who accept the Settlement will forever release and discharge Defendants from any and all claims that arose out of the *Cesarz* and/or *Tang* lawsuit or were proposed as part of either case. Specifically, in consideration of the payments provided for in this Settlement Offer and Release, the sufficiency of which is hereby acknowledged, Plaintiff, on behalf of Plaintiff and Plaintiff's respective heirs, estates, representatives, successors, assigns and agents, hereby expressly and unconditionally waives any appeal from a Court order approving this settlement and dismissing the Actions with prejudice, and releases and forever discharges Defendant and all of the Released Parties from any and all wage and hour claims and causes of action that are based on the factual allegations in the complaints in the Actions, known or unknown, that have arisen or could have arisen at any time prior to the date that this Settlement Offer and Release is executed, including, but not limited to (i) any and all claims for unpaid minimum and/or overtime wages, fines, penalties, liquidated damages, and attorneys' fees and expenses; and (ii) any and all wage and hour claims that Plaintiff asserted or could have asserted in the Actions based on the tip pool(s) at the Wynn and/or Encore, whether under federal, state, local or other laws or ordinances, or pursuant to contract, tort,

or equitable theories.

D. Tax Matters. Neither Counsel plaintiffs nor Defendant's counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability. You may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

E. Conditions of Settlement. **Defendants retain the right to void, at its sole discretion, this Settlement if the net amount allocated to the Rejecting Plaintiffs and Non-Responding Plaintiffs totals \$280,000 or more.** This Settlement is further conditioned upon the Court entering an order approving the Settlement.

IV. G. EFFECTIVE DATE OF SETTLEMENT. THE SETTLEMENT WILL BE EFFECTIVE ONLY AFTER THE COURT HAS ENTERED AN ORDER AND FINAL JUDGMENT OF DISMISSAL. FOR FULL DETAILS REGARDING THE EFFECTIVE DATE OF THE SETTLEMENT, OR ANY OTHER TERMS, **GO TO THE SETTLEMENT ADMINISTRATOR'S WEBSITE AT WWW.WYNNDEALERSSETTLEMENT.COM.**

YOUR LEGAL RIGHTS AND OPTIONS

A. Accept the Settlement. If you wish to accept the Settlement and receive your cash payment on the schedule provided by the Settlement Agreement, you must sign and submit the enclosed Settlement Offer and Release Form **no later than 60-days from the mailing of this Notice**. (Plaintiffs and collective action members who sign and return their Settlement Offer and Release form within the Response Period will be referred to as "Accepting Plaintiffs.") By signing the enclosed Settlement Offer and Release Form you will receive a cash payment and you will be giving up your claims against the Wynn (see Section III.D., "Release of Claims", above).

B. Reject the Settlement. If you do not wish to participate in the Settlement and receive your cash payment, you may reject the settlement by sending a written notice of rejection to the Settlement Administrator **no later than 60-days from the mailing of this Notice**. (Plaintiffs and collective action members who communicated their rejection of the settlement in writing to the Settlement Administrator within the Response Period are referred to herein as "Rejecting Plaintiffs."). You may also reject the settlement, with a right to later claim your settlement share up until 365 days after the Effective Date, by doing nothing, as explained below.

By rejecting the Settlement, you do not release your legal claims against Defendants but you must take further legal action on your own behalf and at your own expense if you wish to pursue your claim. The attorneys who have represented the dealers in the *Tang* and *Cesarz* Actions do not believe it is in the interests of any of the dealers to reject the settlement and are advising the dealers to not reject the settlement. Those attorneys will not act as your attorneys on any such legal claims you bring against Defendants if you reject the settlement. In addition those attorneys will be asking the Court to issue an Order relieving them as your attorney in the *Tang* Action if you reject the settlement and have previously entered into a retainer agreement with them. If you want to reject the settlement and continue to pursue the claims raised in the *Tang* and/or *Cesarz* Actions you must prosecute your claims on your own or find separate legal counsel.

You must take further action immediately if you wish to preserve your claim. You will be dismissed from the *Tang* Action (if you previously joined that Action) and will be responsible for filing your own case. The *Cesarz* Action has previously been dismissed by the Court. Your legal claims, if you previously made any in the *Cesarz* and/or *Tang* actions will be put on hold (stayed) for only 30 days after the Effective Date (defined below) of the Settlement. Once that 30-day period expires, your ability to pursue legal claims against the Wynn over its tip pooling policy will be limited in whole or in part by operation of the statute of

limitations. You should also understand that the *Cesarz* Action and the claims covered by the *Cesarz* Action were dismissed by the district court and appealed but that appeal was never ruled upon. If you bring a new case involving the same claims dismissed in the *Cesarz* Action under the terms of the settlement those claims are not prevented from proceeding against Defendant under the legal doctrines of *res judicata* or *collateral estoppel* but Defendants do have the right to ask the court in any such new case to take notice of that decision in the *Cesarz* Action and adopt its result.

C. Do Nothing. If you do not take any affirmative action (accept or reject the Settlement) within the 60-day deadline for responding to this Notice, you will be deemed a “Non-Responding Plaintiff.” You will be treated as a “Rejecting Plaintiff” so that you will not receive a cash payment but you will not release any your claims against Defendants. In addition, if you have previously entered into a retainer agreement with plaintiffs' counsel those attorneys will be asking the Court to issue an Order relieving them as your attorney in the *Tang* Action if you become a Non-Responding Plaintiff. However, Non-Responding Plaintiffs may claim their allocated share of the settlement up to a period of 365 days after the Effective Date if they do not file any other lawsuit against defendant concerning the claims raised in *Cesarz* and *Tang*, by signing the Settlement Offer and Release form and returning it to the Settlement Administrator.

V. PLAINTIFF COUNSELS' RECOMMENDATION

Counsel for plaintiffs have been litigating against the Wynn Casino over its tip-pooling policy since 2006 in the Nevada State Court, the Federal Court, and before the Nevada Labor Commissioner. They have not succeeded in any of those cases and the Wynn has now stopped its “tip-pooling” policy and offered a settlement to the dealers. It is the opinion of plaintiffs’ counsel that the proposed Settlement is a fair, adequate, and reasonable resolution of the hard-fought dispute and that the Settlement should be accepted.

A. Settlement of the *Cesarz* Claims is Fair, Adequate, and Reasonable. The *Cesarz* Action is currently dismissed and on appeal. The Judge in the *Cesarz* Action has twice dismissed the case for failure to state a valid legal claim against Defendants. The Judge most recently stated that the United States Department of Labor’s (DOL) 2011 Tip Pooling Regulations had been invalidated by the 2018 amendments to the Fair Labor Standards Act (FLSA). Since the *Cesarz* Claims are based on the 2011 Regulations, the Judge found that the plaintiffs could not pursue their claim. Even if the Judge’s decision were reversed, Defendants believe they have very strong defenses to the *Cesarz*, Claims both on the law and the facts, if they do not prevail outright on the now second appeal in *Cesarz*. Plaintiffs’ counsel, having evaluated the issues, and while believing the *Cesarz* case may succeed for the plaintiffs, agrees that defendants have significant defenses to the *Cesarz* Claims and whether the plaintiffs will prevail on the *Cesarz* Claims is far from certain. It is unknown whether the appeal in *Cesarz* will be successful and securing a reversal on appeal in *Cesarz* for the plaintiffs, for the second time, does not mean the plaintiffs will be successful in collecting any money in the *Cesarz* Action. Plaintiffs’ counsel believes it is fair and reasonable, under all of the relevant circumstances, for the plaintiffs in *Cesarz* and the other collective action members to accept a settlement of their *Cesarz* Claims for \$1,680,000, the portion of the proposed Settlement allocated to those claims and recommend they do so. In making that recommendation, plaintiffs' counsel acknowledges that payment is for a minority of the money alleged to be owed to the plaintiffs and the other collective action members on the *Cesarz* Claims but believe that settlement is reasonable and should be accepted based upon the relevant facts and circumstances.

B. Settlement of the *Tang* Action and Claims is Fair, Adequate, and Reasonable. Congress passed an amendment to the FLSA in 2018, which states that “An employer may not keep tips received by its employees for any purposes, including allowing managers or supervisors to keep any portion of employees’ tips, regardless of whether or not the employer takes a tip credit.” The key legal question presented in *Tang* is what type of employee would be considered a “manager or supervisor.” The DOL is charged with developing regulations to define who will be considered a “manager or supervisor” under the

new law and has taken the position that a "manager or supervisor" is only prohibited from participating in a tip pool if they hire or fire other employees or have significant involvement in making hiring or firing or other decisions about employees. If the DOL interpretation of what it means to be a "manager or supervisor" is accepted by the courts the Wynn insists that the *Tang* case will also be unsuccessful for the dealers because the CSTLs and boxmen are not "managers or supervisors." Plaintiffs' counsel does not agree with that argument by the Wynn, but agrees that is a serious argument and it is unknown how that argument would be ruled on by the courts. Assuming that plaintiffs could prevail on the merits of their claim under the new law, the total amount of tips Wynn took from the dealers' tip pool from March 23, 2018 to November 11, 2018 was \$3,879,951. Seventy (70%) of the Total Settlement Amount, or \$3,920,000 has been allocated to pay the *Tang* Claims. Given the uncertainty of the new law and the development of new regulations that will interpret the new law, Counsel believe that the Settlement is a fair, adequate, and reasonable resolution of the *Tang* Action and Claims and recommend that the Settlement be accepted.

VI. COURT DISMISSAL OF CASE

So long as Defendant does not void the Settlement on account of the amount of persons who do not accept or who do not respond to the Settlement, the Court will issue an Order directing that a final judgment be entered dismissing the *Tang* action and that the Settlement's terms become effective. The Court will also determine whether to relieve the attorneys prosecuting the *Tang* Action from any further responsibility for the legal claims possessed by those dealers who reject the settlement or are Non-Responding Plaintiffs and who have previously entered into retainer agreements with those attorneys. The Court may take this action with or without a hearing. You may check the settlement website identified in Section III above or the Court's PACER site to confirm whether a hearing has been scheduled. **You are not required to attend any hearing**, although any plaintiff or collective action member is welcome to attend any hearing.

VII. MORE INFORMATION ABOUT THE SETTLEMENT

You may call the Settlement Administrator at 1-888-859-0597 or write to *Cesarz/Tang v. Wynn* Settlement Administrator, c/o CPT Group, Inc. 50 Corporate Park, Irvine, CA 92606; or contact plaintiffs' Counsel at:

<p>LEON GREENBERG, P.C. Leon Greenberg 2965 South Jones Boulevard #E-3 Las Vegas, NV 89146 Tel: (702) 383-6085 / Fax: (702) 385-1827 Email: attorney@wynnlawsuit.com Email communications are preferred</p>	<p>THIERMAN BUCK LLP Mark Thierman Joshua Buck Leah Jones 7287 Lakeside Drive Reno, NV 89511 Tel: (775) 284.1500 / Fax: (775) 703.5027 Email: info@thiermanbuck.com</p>
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This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, by going to the Settlement Administrator's website at www.wynndealerssettlement.com.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.