

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this Settlement Agreement is between Agustin Merino ("Plaintiff"), on behalf of himself, the State of California, and similarly aggrieved employees, on the one hand, and Sterling Motors, Ltd. dba Sterling BMW of Newport Beach and Wayne Morris ("Defendants"), on the other hand. Plaintiff and Defendants collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

In addition to the other terms defined in this Agreement, the terms below have the following meaning:

- A. **Action:** *Agustin Merino v. Sterling Motors, Ltd. dba Sterling BMW of Newport Beach, et al* (Orange County Superior Court, Case No. 30-2020-01175391-CU-OX-CXC).
- B. **Administration Costs:** The costs incurred by the Settlement Administrator to administer this Settlement, which shall not exceed \$5,000.00. All Administration Costs shall be paid from the Gross Settlement Amount. Any amount not awarded by the Court, or if the actual administration costs are lower than the amount allocated by the Parties, the difference will become part of the Net Settlement Amount for distribution.
- C. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement:** The settlement agreement reflected in this document, titled "Joint Stipulation and Settlement Agreement."
- D. **Attorney Fee Award:** The amount, not to exceed one-third (1/3) of the Gross Settlement Amount (\$100,000.00), finally approved by the Court and awarded to Plaintiff's Counsel. The Attorney Fee Award shall be paid from the Gross Settlement Amount and will not be opposed by Defendants. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount.
- E. **Cost Award:** The amount that the Court orders Defendants to pay Plaintiff's Counsel for payment of actual litigation costs, which shall not exceed \$15,000.00. The Cost Award will be paid from the Gross Settlement Amount and will not be opposed by Defendants. The Cost Award is subject to Court approval. If the Court awards less than the amount requested, or if the actual litigation costs are lower than the amount allocated by the Parties, the difference will become part of the Net Settlement Amount.
- F. **Counsel for Defendants:** Fisher & Phillips LLP.

- G. **Defendants:** Sterling Motors, Ltd. dba Sterling BMW of Newport Beach and Wayne Morris.
- H. **Effective Final Settlement Date:** The effective date of this Settlement will be the date the Court enters the PAGA Settlement Approval Order.
- I. **Enhancement Award:** The award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00), subject to Court approval, to Plaintiff Agustin Merino in consideration of Plaintiff's efforts in the lawsuit, agreement to a general release, and benefits conferred upon the State of California and the Settlement Group Members.
- J. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary Three Hundred Thousand Dollars and Zero Cents (\$300,000.00). This is the total amount Defendants can be required to pay under this Settlement Agreement. The Gross Settlement Amount includes: (1) the Payout Fund to be paid to Settlement Group Members; (2) the Enhancement Award to Plaintiff; (3) the Attorney Fee Award and Cost Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment, as approved by the Court. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
- K. **Individual Settlement Share(s):** The amount payable to each Settlement Group Member under the terms of this Agreement.
- L. **LWDA:** California Labor and Workforce Development Agency.
- M. **LWDA Payment:** The LWDA Payment consists of, and shall be made from, seventy-five percent (75%) of the Net Settlement Amount, and will be distributed to the LWDA in the time period described herein.
- N. **Net Settlement Amount or NSA:** The total amount of money available for payout to Settlement Group Members and to the LWDA, after the following deductions from the GSA: (1) the Attorney Fee Award and Cost Award, (2) the Enhancement Award, (3) the portion of the PAGA Payment paid to the LWDA, and (4) Administration Costs. The NSA will be apportioned 75% payable to the LWDA and 25% payable to the Settlement Group (the "Payout Fund").
- O. **Notice of PAGA Settlement:** The Notice of PAGA Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval, is a letter explaining the Settlement to the Settlement Group Members, which will accompany each Individual Settlement Share check. The Notice of PAGA Settlement will also be translated into Spanish.

- P. **Operative Complaint:** The Complaint filed in the Action, on December 18, 2020.
- Q. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
- R. **PAGA Period:** October 14, 2019 through May 27, 2022 (the date of mediation).
- S. **PAGA Representative or Plaintiff:** Agustin Merino.
- T. **PAGA Settlement Approval Order:** The Court's order approving the proposed Settlement.
- U. **PAGA Settlement Approval Hearing:** The hearing at which the Court will determine whether to approve the Settlement.
- V. **Parties:** Plaintiff Agustin Merino and Defendants Sterling Motors, Ltd. dba Sterling BMW of Newport Beach and Wayne Morris.
- W. **PAGA Counsel or Plaintiff's Counsel:** Zachary Crosner, Michael Crosner, Blake Jones, and Jamie Serb of Crosner Legal, P.C.
- X. **Payout Fund:** The 25% of the NSA payable to Settlement Group Members.
- Y. **Qualified Settlement Fund or QSF:** The Parties agree that the Gross Settlement Amount is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.4168B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- Z. **Released Claims:** Any and all PAGA claims for civil penalties that arose during the PAGA Period, based on the facts alleged in the Operative Complaint and Plaintiff's letter filed with the LWDA for violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 221-224, 225.5, 226, 226.3, 226.7, 233, 234, 245-248.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, 2802, and 2810.5. The release will be applicable to the Released Parties and only applies to periods of time when Settlement Group Members were members of the Settlement Group (i.e., excluding periods of time in an exempt position) during the PAGA Period.
- AA. **Released Parties:** Defendants Wayne Morris and Sterling Motors, Ltd. dba Sterling BMW of Newport Beach and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators,

attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

- BB. Settlement Administration:** The Settlement Administrator will conduct a skip trace for the address of all formerly employed Settlement Group Members. The Settlement Administrator will receive the Settlement Group Member Data from the Defendants, calculate the settlement shares, receive the GSA from Defendants, and distribute the GSA as instructed herein.
- CC. Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Simpluris, Inc.
- DD. Settlement Group:** All current and former non-exempt, hourly paid, commissioned, and/or piece rate paid employees employed by Defendants in California during the PAGA Period.
- EE. Settlement Group Member:** Each person eligible to participate in this Settlement who is a member of the Settlement Group as defined above.
- FF. Settlement Group Members' Data:** The data that Defendants shall provide to the Settlement Administrator, which is to include, in a searchable electronic format the following for each Settlement Group Member: (i) full name, (ii) last known address, (iii) last known telephone number, (iv) social security number, and (v) the number of pay periods for each Settlement Group Member during the PAGA Period. The Settlement Group Members' Data shall be based on Defendants' payroll, personnel, and other business records. The Settlement Group Member Data shall be held as private and confidential information, and shall not be shared with any third party by the Settlement Administrator without the express written consent of Defendants' counsel of record and/or court order.
- GG. Superior Court of the State of California:** Superior Court for the State of California for the County of Orange.

II. RECITALS

- A.** On June 15, 2020, Plaintiff Agustin Merino filed his notice of PAGA claims with the LWDA and served Defendants with copies of his letter. Plaintiff did not receive a response from the LWDA regarding his claims.
- B.** Subsequently, Plaintiff filed his Operative Complaint in the Superior Court of the State of California, County of Orange on December 18, 2020. The Operative Complaint alleged a PAGA cause of action on behalf of the State of California for Plaintiff and all similarly aggrieved employees employed by Defendants as non-exempt hourly paid, commissioned, and/or piece rate employees of

Defendants who were employed in California for violation of various sections of the Labor Code and IWC Wage Orders.

- C. Defendant Sterling Motors, Ltd. filed its Answer on March 1, 2021. In its answer Defendants affirmatively denied generally and specifically all claims raised in the complaint.
- D. The parties attended mediation on May 27, 2022 with mediator, Lisa Klerman. After a full day of arms-length mediation, the parties were able to reach a settlement, the terms of which are reflected herein.
- E. **Benefits of Settlement to Settlement Group Members.** Plaintiff and Plaintiff's Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Plaintiff's Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Plaintiff's Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Plaintiff's Counsel believe the settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Settlement Group Members.
- F. **Defendants' Reasons for Settlement.** Defendants recognize that the defense of the Action will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants has been and, unless this settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- G. **Defendants' Denial of Wrongdoing.** Defendants generally and specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort. Defendants assert a number of defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants.
- H. **Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Settlement Group Members, or Plaintiff's Counsel as to the merits of

any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is approved by the Court, the Plaintiff, Settlement Group Members, and Plaintiff's Counsel will not oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Settlement Group Members have resolved and are forever barred from re-litigating the Released Claims.

III. SETTLEMENT TERMS AND CONDITIONS

- A. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendants are obligated to pay under this Settlement Agreement is Three Hundred Thousand Dollars and Zero Cents (\$300,000.00).
- B. Individual Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Settlement Share from the Payout Fund to each Settlement Group Member.

1. Calculation.

- a. Individual Settlement Share Calculation.** Each Settlement Group Member will receive a proportionate share of the Payout Fund that is equal to (i) the number of pay periods he or she worked for Defendants in California based on the Settlement Group Member Data provided by Defendants, divided by (ii) the total number of pay periods worked by all Settlement Group Members based on the same Database, which is then multiplied by the Payout Fund. One day worked in a given pay period will be credited as a pay period for purposes of this calculation. Therefore, the value of each Settlement Group Member's Individual Settlement Share ties directly to the amount of pay periods that he or she worked.
- 2. No Tax Withholdings.** Each Settlement Group Member's gross Individual Settlement Share will be apportioned as 100% penalties and shall be reported on an IRS Form 1099. Payroll tax withholdings and deductions will not be withheld from these Individual Settlement Shares. Plaintiff and each Settlement Group Member bear the full responsibility for payment of any taxes or withholding that are found to be owed from the Individual Settlement Share. Neither Plaintiff's Counsel nor Defendants' Counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied on as such. The tax issues for Plaintiff and each Settlement Group Member are unique, and Plaintiff and each Settlement Group Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement.

C. Disbursement Recipients. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the GSA to the following:

- 1. To Plaintiff's Counsel.** Plaintiff's Counsel will apply to the Court for, and Defendants agree not to oppose, a total Attorney Fee Award not to exceed one-third (1/3) of the GSA (\$100,000.00) of the GSA and a Cost Award not to exceed \$15,000.00. The Settlement Administrator will pay the court-approved amounts for the Attorney Fee Award and Cost Award out of the GSA. Payroll tax withholding and deductions will not be taken from the Attorney Fee Award or the Cost Award. An IRS Form 1099 will be issued to Plaintiff's Counsel with respect to the Attorney Fee Award. In the event the Court does not approve the entirety of the application for the Attorney Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Plaintiff's Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the NSA.
- 2. To the Settlement Administrator.** The Settlement Administrator will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$5,000.00. This will be paid out of the GSA. If the actual amount of Administration Costs is less than the amount allotted, the difference shall become part of the NSA.
- 3. To the LWDA.** The Settlement Administrator will pay to the LWDA Seventy-Five Percent (75%) of the NSA for its share of the PAGA penalties.
- 4. To Settlement Group Members (Including Plaintiff).** The Settlement Administrator will pay to Settlement Group Members the Payout Fund, which represents Twenty-Five Percent (25%) of the NSA, according to the Individual Settlement Share calculations set forth above.

IV. SETTLEMENT APPROVAL

- a. Motion for Settlement Approval.** As soon as is practicable after the execution of this Agreement, Plaintiff's Counsel shall file and serve a Motion for Settlement Approval pursuant to California Labor Code section 2699(f) advocating that the terms of this Settlement are fair, adequate and reasonable, and directing the Parties to carry out the provisions of this Settlement. The Parties acknowledge that, under applicable law, the Action is not a class action governed by the procedures of approval of Class Action settlements under California law and thereon agree that the Individual Settlement Shares shall be distributed without a claims process, notice, or an opportunity to object or opt-out.

- b. Effect of Denial of Settlement Approval.** Should the Court decline to approve the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorney Fee Award, Cost Award, Enhancement Award, and Administration Costs, shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating to an application for the Attorney Fee Award, Cost Award, Enhancement Award, and Administration Costs shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Plaintiff's Counsel's ability to appeal any decision by the Court to award less than the requested Attorney Fee Award, Cost Award, Enhancement Award, and Administration Costs.
- c. Proposed Order and Judgment.** Upon Approval of the Settlement, the Parties shall present to the Court a proposed PAGA Settlement Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.
- d. Cooperation in Obtaining Court Approval.** The Parties agree that the Settlement is fair and reasonable, and will so represent to the Court. The Parties shall timely cooperate and present to the Court, for its consideration in connection with the approval of the Settlement, any and all evidence as may be reasonably necessary under the appropriate standards for approving the Settlement, and do all things reasonably necessary to consummate the Settlement, including continuing good faith efforts to effectuate this Settlement should the Court deny approval. The Parties shall use their best efforts to comply with all terms contemplated by this Settlement and any other efforts that may become necessary by order of the Court to effectuate this Settlement and the terms set forth herein.
- e. Appeals.**

 - i. Vacating, Reversing, or Modifying Judgment on Appeal.** If, after a notice of appeal, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then this Settlement will become null and void and the Parties will have

no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the GSA, an alteration in the calculation of the NSA, and any change to the calculation of the Individual Settlement Shares.

V. SETTLEMENT ADMINISTRATION

- a. **Settlement Administrator.** The Parties agree to use Simpluris, Inc. as the Settlement Administrator to administer the Settlement. Settlement Administration duties shall include performing a single address follow up on any returned mail, and the calculation, processing, and mailing of all Individual Settlement Shares and tax forms, if required, to the Settlement Group Members and tax authorities. All of the Settlement Administrator's costs and fees shall be paid from the GSA, not to exceed \$5,000.00 as set forth above.
- b. **Settlement Group Data.** Within seven (7) calendar days after entry of the PAGA Settlement Approval Order, Defendants shall deliver to the Settlement Administrator the Settlement Group Members' Data. If any or all of this information is unavailable to Defendants, Defendants will so inform Plaintiff's Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the unavailable information.
- c. **Funding the Settlement:** Defendants shall fund the settlement pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order.
 - i. **Timing.** Defendants shall wire to the Settlement Administrator the GSA within fourteen (14) calendar days of the Effective Final Settlement Date.
 - ii. **QSF Treatment.** The Parties and Settlement Administrator shall treat the GSA as coming into existence as a QSF on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.
- d. **Disbursement of the Settlement:** The Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order. The Settlement Administrator shall keep Defendants' Counsel and Plaintiff's Counsel apprised of all distributions from the GSA. The Settlement Administrator shall respond to questions from Defendants' Counsel and Plaintiff's Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff,

Plaintiff's Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. Timing.** Pursuant to the terms of this Agreement, within fourteen (14) calendar days after the Settlement Administrator receives the GSA, the Settlement Administrator shall disburse: (1) the Payout Fund to be paid to Settlement Group Members; (2) the Attorney Fee Award and Cost Award to Plaintiff's Counsel for attorneys' fees and costs, as approved by the Court; (3) the Enhancement Award to Plaintiff; (4) the Administration Costs, as approved by the Court; and (5) the LWDA Payment to the LWDA, as approved by the Court.
- e. Notice of PAGA Settlement.** The distribution of Individual Settlement Shares shall be accompanied by the Notice of PAGA Settlement.
- f. Uncashed Checks.**
 - i. Check Expiration.** Checks will remain negotiable for one hundred and eighty (180) days.
 - ii. Undeliverable Checks.** Any Individual Settlement Share check returned to the Settlement Administrator as undelivered shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Individual Settlement Share. If an updated mailing address is identified, the Settlement Administrator shall resend the Individual Settlement Share to the Settlement Group Member promptly, and in any event within three (3) business days of obtaining the updated address.
 - iii. Reminder Postcard.** If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.
 - iv. Cancelled Checks.** If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks.

- v. Uncashed Funds.** All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those Individual Settlement Share checks remaining un-cashed, shall be distributed to the State Controller under the Unclaimed Property Law, California Civil Code section 1500 et seq.
- g. Post-Distribution Declaration.** Within two hundred (200) calendar days of distributing the GSA, the Settlement Administrator shall provide to the Parties, for filing with the Court, a declaration verifying, under oath, that the Settlement Administrator has made disbursement of the GSA pursuant to the terms of this Agreement and the Court's PAGA Settlement Approval Order. In this declaration, the Settlement Administrator shall also state how many and the total amount of settlement checks that went uncashed, how many and the amounts that were undeliverable, and when the uncashed settlement funds were sent to the State Controller.

VI. RELEASE OF CLAIMS

- a. Plaintiff and Settlement Group Members.** As of the Effective Final Settlement Date, Plaintiff and Settlement Group Members release the Released Parties for the Released Claims. The express purpose of this settlement is to forever bar Plaintiff, the LWDA, and any Settlement Group Member from acting on behalf of or purporting to act on behalf of the LWDA from asserting any of the Released Claims against the Released Parties in any future litigation. It is the intent of the Parties that, to the greatest extent provided by law, including under the holding of *Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009), the ability of Plaintiff, the State of California or any Settlement Group Member to bring any of the Released Claims against the Released Parties during the PAGA Period is completely and forever foreclosed. Any Party to this Settlement Agreement may use the Settlement Agreement to assert that this settlement and the judgment entered by the Court following approval bars any later-filed action asserting the Released Claims against any of the Released Parties during the PAGA Period.
- b. Plaintiff's General Release.** In a separate and concurrent agreement, Plaintiff has agreed to a settlement in exchange of a general release of claims, which will become effective as of the Effective Final Settlement Date.

VII. MISCELLANEOUS TERMS

- a. Defendants' Legal Fees.** Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Action outside of the GSA.

- b. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to this litigation and liability if the Settlement is not approved. Defendants deny that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action. This Stipulation is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Stipulation is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Stipulation).
- c. No Effect on Employee Benefits.** The Individual Settlement Shares paid to Plaintiff and Settlement Group Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Settlement Group Members. The Parties agree that any Individual Settlement Share paid to Plaintiff or the Settlement Group Members under the terms of this Agreement do not represent any modification of Plaintiff's or Settlement Group Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- d. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- e. Authorization to Enter Into Settlement Agreement.** Plaintiff's Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents,

supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- f. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- g. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Settlement Approval hearing to be conducted by the Court.
- h. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- i. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- j. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that she has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- k. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- l. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
- m. No Tax or Legal Advice.** It is understood and agreed that neither Defendants, Defendants' Counsel, nor Plaintiff's Counsel are providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Settlement Group

Members will assume any such tax obligations or consequences that may arise from this Agreement, and that Settlement Group Members shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Settlement Group Members, such Settlement Group Members assumes all responsibility for the payment of such taxes. Plaintiff and the Settlement Group Members should consult with their tax advisors concerning the tax consequences of the Individual Settlement Shares they receive pursuant to this Stipulation.

- n. **Jurisdiction of the Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.
- o. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.
- p. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- q. **Execution in Counterpart.** This Stipulation may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile, PDF, DocuSign (or similar e-signature) signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

[Signatures on Next Page]

VIII. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.

AS TO CONTENT:

Dated: 06 / 16 / 2022

AGUSTIN MERINO



Plaintiff

Dated: 6/29/22

WAYNE MORRIS



Defendant

Dated: 6/20/22

**STERLING MOTORS, LTD. DBA STERLING
BMW OF NEWPORT BEACH**



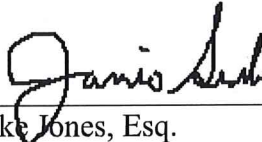
Defendant

Name: Preston Mihar
Title: Secretary

AS TO FORM:

Dated: 06/16/2022

CROSNER LEGAL, P.C.



Blake Jones, Esq.
Jamie Serb, Esq.
Attorneys for Plaintiff

Dated: 6/29/2022

FISHER & PHILLIPS, LLP



Colin Calvert, Esq.
Selwyn Chu, Esq.
Attorneys for Defendants

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

You are receiving this letter because you are entitled to money as a result of a court approved settlement in *Agustin Merino v. Sterling Motors, Ltd. dba Sterling BMW of Newport Beach, et al*, Superior Court of the State of California, County of Orange, Case No. 30-2020-01175391-CU-OX-CXC) (the “**Lawsuit**”).

What is this case about?

In the Lawsuit, Plaintiff Agustin Merino asserted claims for civil penalties pursuant to the Private Attorneys General Act of 2004 (“**PAGA**”) Labor Code section 2698 *et seq.* against Defendants, Sterling Motors, Ltd. dba Sterling BMW of Newport Beach and Wayne Morris (“**Defendants**”) on behalf of himself and all current and former non-exempt, hourly paid, commissioned, and/or piece rate paid employees employed by Defendants in California at any time between October 14, 2019 through May 27, 2022 (the “**PAGA Period**”). These claims are based on Defendants’ alleged (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay minimum wage; (4) failure to pay overtime; (5) failure to provide correct wage statements; (6) failure to pay proper sick pay wages; (7) failure to pay all reimbursements; and (8) failure to pay all wages due at termination or quitting. Defendants deny each of these claims and contentions alleged by Plaintiff in the Lawsuit and contend that they complied with California law in all respects.

What are the terms of the Settlement?

Plaintiff and Defendants reached a settlement of \$300,000.00, which was reviewed and approved by the Court. Defendants’ records show that you are a Settlement Group Member. Accordingly, you are entitled to a Settlement Share based on your percentage share of pay periods during the PAGA Period.

What should I do now?

You are automatically included in this Settlement. You may immediately deposit your enclosed settlement check and need not take any further action at this time.