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Attorneys for Plaintiff
SHIMON BROSHINSKY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

SHIMON BROSHINSKY, an individual, on
behalf of himself, all other aggrieved
employees, and the general public,

Plaintiff,

v.

FIRST MOTOR GROUP OF ENCINO,
LLC, a Delaware limited liability company,
FIRST MOTOR GROUP OF LOS
ANGELES, a California limited liability
company, ENCINO MOTORCARS, LLC, a
California limited liability company, and
TROPHY AUTOMOTIVE DEALER
GROUP, LLC, a Delaware limited liability
company, and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: 20STCV38668
[Unlimited Jurisdiction]

STIPULATION OF SETTLEMENT

*Assigned for all purposes to the
Honorable Monica Bachner, Dept. 71*

Complaint Filed: October 8, 2020
Trial Date: Not yet set

1 This Stipulation of Settlement (“PAGA Settlement Agreement” or “Stipulation of
2 Settlement” or “Settlement”) is made by and between the Named Plaintiff, SHIMON
3 BROSHINSKY (“Plaintiff”), on his own behalf and on behalf of all members of the PAGA
4 Group, as defined below, and Defendants FIRST MOTOR GROUP OF ENCINO, LLC (“First”) and
5 TROPHY AUTOMOTIVE DEALER GROUP, LLC (“Trophy”) (collectively,
6 “Defendants”), in the lawsuit entitled *Shimon Broshinsky v. First Motor Group of Encino, LLC*,
7 *et al.*, Los Angeles County Superior Court Case No. 20STCV38668 (the “Litigation”). The
8 term “Party” or “Parties” as used herein shall refer to Plaintiff, Defendants, or both, as may be
9 appropriate. This PAGA Settlement Agreement resolves all claims asserted against Defendants
10 pertaining to the claims in the Litigation pursuant to and subject to the definitions, recitals, and
11 terms and conditions set forth herein, which by this reference become an integral part of this
12 Stipulation of Settlement, subject to the approval of the Court.

13 **I. DEFINITIONS**

14 **A. Administrative Costs.** All administrative costs of settlement, including cost of
15 notice to the Settlement Group, administration, and any fees and costs incurred or charged by
16 the Settlement Administrator in connection with the execution of its duties under this Stipulation
17 of Settlement.

18 **B. Agreement.** The terms “Agreement” or “Settlement Agreement” are used
19 synonymously herein to mean this PAGA Settlement Agreement for purposes of Resolution.

20 **C. Court.** The term “Court” as used herein means the Superior Court of the State
21 of California for the County of Los Angeles.

22 **D. Date of Approval.** The terms “Date of Approval” or “Approval” as used herein
23 mean the date of the Court’s approval of the PAGA Settlement Agreement.

24 **E. Defendants.** The term “Defendants” as used herein means: First Motor Group
25 of Encino, LLC and Trophy Automotive Dealer Group, LLC.

26 **F. Effective Date.** The term “Effective Date” means the later of the following
27 events: (a) five (5) calendar days after Defendants’ receipt of a notice of entry of the Court’s
28 order approving the Settlement if there are no objections to the Settlement or intervenors in the

1 Litigation; or (b) if any appeal, writ or other appellate proceeding opposing the Settlement has
2 been filed, then fourteen (14) calendar days after when any appeal, writ, or other appellate
3 proceeding with respect to the Settlement has been resolved finally and conclusively with no
4 right to pursue further remedies or relief.

5 **G. Litigation.** The term “Litigation” as used herein means the action entitled
6 *Shimon Broshinsky v. First Motor Group of Encino, LLC, et al.*, filed in Los Angeles County
7 Superior Court, Case No. 20STCV38668.

8 **H. Named Plaintiff.** The term “Named Plaintiff” as used herein means Shimon
9 Broshinsky.

10 **I. Net Settlement Amount.** The term “Net Settlement Amount” as used herein is
11 the total Settlement Payment (\$250,000.00) and will be allocated as follows: (a) PAGA’s
12 Counsel’s award of attorneys’ fees up to the requested amount of 33-1/3% (\$83,333.33. 00) of
13 the Settlement Payment; (b) PAGA Counsel’s request for reimbursement of Litigation costs;
14 (c) Administrative Costs; and (d) PAGA Enhancement Payment; the remainder of the
15 Settlement Payment after deducting items (a), (b), (c), and (d) herein shall be designated as
16 “PAGA Penalties”, which are allocated between the LWDA and PAGA Group, with seventy-
17 five percent (75%) of penalties payable to the LWDA (“LWDA Payment”) and twenty-five
18 percent (25%) to the PAGA Group (“PAGA GROUP PAYMENT”) pursuant to California’s
19 Private Attorney General Act (“PAGA”), and as provided in Sections VI and X, respectively.

20 **J. Net Settlement Payments.** The term “Net Settlement Payment(s)” shall include
21 payments made to the Settlement Group as part of the Resolution.

22 **K. LWDA Payment.** The term “LWDA Payment” as used herein means seventy-
23 five percent (75%) of the remainder of the Settlement Amount after the deduction of any award
24 of attorneys’ fees, Litigation costs, and Administrative Costs and the PAGA Enhancement
25 Payment.

26 **L. PAGA GROUP PAYMENT.** The term “PAGA GROUP PAYMENT” as used
27 herein means Twenty-five percent (25%) of the remainder of the Settlement Amount after the
28 deduction of any award of attorneys’ fees, Litigation costs, Administrative Costs, and the PAGA

Enhancement Payment.

M. PAGA Enhancement Payment. The amount the Court awards to Plaintiff, which will not exceed Twenty Thousand Dollars (\$20,000.00), subject to Court approval, in recognition of his actions in conferring a benefit upon the State of California and his effort and work in prosecuting the Litigation on behalf of the PAGA Group.

N. Plaintiff's Counsel. The term "Plaintiff's Counsel" as used herein means: Boyamian Law, Inc., who are counsel for and acting on behalf of Named Plaintiff.

O. PAGA Group. The PAGA Group is defined as: All persons employed by Defendant First Motor Group of Encino, LLC within the state of California, who are paid, in whole, or in part, on a commission basis at any time within the PAGA Period. Defendant estimates that there are 119 employees that fit within this definition during the PAGA Period.

P. PAGA Period. The term "PAGA Period" or "Settlement Period" shall refer to the time period from August 29, 2017 to October 25, 2021.

Q. Resolution. The term "Resolution" as used herein means this Agreement to resolve the Litigation.

R. Settlement Administrator. The term "Settlement Administrator" as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Settlement Payment, as defined below, and all related matters.

S. Settlement Agreement. The terms "Settlement Agreement" or "Agreement" are used synonymously herein to means this PAGA Settlement Agreement.

T. Settlement Amount. The terms "Settlement Amount" and "Gross Settlement Fund" as used herein mean a fund in the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00) which shall be paid by Defendants, and from which all Net Settlement Payments, PAGA Enhancement Payment, Court approved attorneys' fees and Litigation costs pursuant to Section X, Administrative Costs pursuant to Section VI, and distribution to the LWDA pursuant to Section VIII shall be paid, except as provided herein.

II. BACKGROUND

A. On July 23, 2020, Plaintiff provided Defendants, as well as named defendants

1 FIRST MOTOR GROUP OF LOS ANGELES, LLC (“FMGLA”) and ENCINO
2 MOTORCARS, LLC (“Encino”) with a Private Attorney General Act (“PAGA”) Notice to the
3 Labor and Workforce Development Agency (“LWDA”) alleging against Defendants, FMGLA,
4 and Encino, claims for wage and hour violations on Plaintiff’s behalf and on behalf of other
5 alleged aggrieved employees, including: (1) failure to pay for all hours worked including
6 overtime; (2) minimum wage violations; (3) rest period violations; (4) meal period violations;
7 (5) wage statement violations; and (6) failure to pay wages upon termination (“waiting time”
8 penalties).

9 B. On October 8, 2020, Plaintiff brought an action against Defendants, as well as
10 FMGLA and Encino, which is pending as *Shimon Broshinsky v. First Motor Group of Encino,*
11 *LLC, et al.*, Los Angeles County Superior Court Case No. 20STCV38668 (the “Litigation”). In
12 the Litigation, Plaintiff asserts the same claims alleged in his PAGA notice to the LWDA,
13 including seeking PAGA penalties pursuant to violations of Labor Code sections 201, 202, 203,
14 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 553, 558, 1174,
15 1174.5, 1182.1-1182.3, 1194-1197.1, 1198, 2802 and 2698, *et seq.*, as well as applicable Wage
16 Order 4-2001. The Litigation sought penalties under PAGA for these alleged violations.

17 C. On January 1, 2021, Plaintiff voluntarily dismissed Encino without prejudice.

18 D. On February 5, 2021, Plaintiff voluntarily dismissed FMGLA without prejudice;

19 E. Following the filing of the Litigation, counsel for the Parties met and conferred
20 with respect to the potential settlement of the Litigation. Pursuant to these discussions, the
21 Parties agreed to exchange informal discovery and engage in private mediation.

22 F. Pursuant to the Parties’ agreement to informally exchange discovery in
23 furtherance of the mediation, Plaintiff’s Counsel has been provided information and
24 documentation concerning the claims set forth in the Litigation for the time period of August
25 29, 2017, to October 25, 2021. More specifically, such informal discovery includes
26 documentation regarding Named Plaintiff’s employment; a sampling of time and payroll records
27 for the PAGA Group; information regarding the number of putative PAGA Group members and
28 the number of current versus former employees; and the total pay periods worked by the PAGA

1 Group during the PAGA Period.

2 G. The Parties have engaged in good faith, arms-length negotiations. More
3 specifically, on October 25, 2021, the Parties participated in an all day mediation with mediator
4 Marc Feder. During the course of the mediation, the Parties discussed resolution of the
5 Litigation to encompass the PAGA Period of August 29, 2017 to October 25, 2021. A settlement
6 was not reached at the mediation. However, the mediation resulted in a mediator's proposal by
7 Mr. Feder, which was subsequently accepted by all the Parties resulting in the drafting of this
8 Stipulation of Settlement. The Parties settled the case, subject to the Approval of the Court and
9 finalization of a formal Stipulation of Settlement. The Parties have now entered into a more
10 detailed, formalized Stipulation of Settlement for submission to the Court for Approval.

11 H. Plaintiff's Counsel has conducted an investigation of the law and facts relating
12 to the claims asserted in the Litigation as they relate to the PAGA Period, and has concluded,
13 taking into account the sharply contested issues involved, the expense and time necessary to
14 pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of
15 the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the
16 substantial benefits to be received by the Named Plaintiff and the members of the PAGA Group
17 pursuant to this Agreement, that a settlement with Defendants on the terms and conditions set
18 forth herein is fair, reasonable, adequate, and in the best interests of the PAGA Group. Named
19 Plaintiff, on his own behalf and as a representative pursuant to PAGA, has agreed to settle the
20 Litigation with Defendants on the terms set forth herein.

21 I. Defendants have concluded that, because of the substantial expense of defending
22 against the Litigation, the length of time necessary to resolve the issues presented herein, the
23 inconvenience involved, and the concomitant disruption to their operations, it is in their best
24 interests to accept the terms of this Agreement. Defendants deny each of the allegations and
25 claims asserted against it in the Litigation. However, Defendants nevertheless desire to settle
26 the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing
27 litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

28 J. This Agreement is intended to and does effectuate the full, final, and complete

1 resolution of all allegations and claims that were asserted in the Litigation by Named Plaintiff
2 as released below herein.

3 **III. JURISDICTION**

4 The Parties agree that the Court has jurisdiction over the Parties and the subject matter
5 of this Litigation. The Litigation includes claims that, while Defendants deny them in their
6 entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes.
7 After the Court has granted Approval of the Resolution, pursuant to California Code of Civil
8 Procedure Section 664.6 the Parties agree that the Court shall retain jurisdiction of this action
9 solely for the purpose of interpreting, implementing, and enforcing this Resolution consistent
10 with the terms set forth herein, and the Parties and their counsel submit to the jurisdiction of the
11 Court for purposes of interpreting, implementing, and enforcing this Agreement and all orders
12 and judgments entered in connection therewith.

13 **IV. STATEMENT OF NO ADMISSION**

14 A. Defendants deny liability to Named Plaintiff and to the PAGA Group upon any
15 claim or cause of action. This Agreement does not constitute, and is not intended to constitute,
16 an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or
17 claims made against them in the Litigation.

18 B. Nothing in this Agreement, nor any action taken in implementation thereof, nor
19 any statements, discussions, or communications, nor any materials prepared, exchanged, issued,
20 or used during the course of the negotiations leading to this Agreement or the Resolution, is
21 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be
22 used, or be admissible in any way in this case or any other judicial, arbitral, administrative,
23 investigative, or other forum or proceeding as evidence of any violation of any federal, state, or
24 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at
25 law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement,
26 directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative, or
27 other forum or proceeding, as purported evidence of any violation of any federal, state, or local
28 law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or

1 in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used
2 in any proceeding before the Court that has as its purpose the interpretation, implementation, or
3 enforcement of this Agreement or any orders or judgments of the Court entered in connection
4 with the Resolution.

5 C. None of the documents produced or created by Named Plaintiff or the PAGA
6 Group in connection with the claims procedures or claims resolution procedures constitute, and
7 they are not intended to constitute, an admission by Defendants of any violation of any federal,
8 state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or
9 duty at law or in equity.

10 D. Nothing in this Agreement will be construed as an admission or
11 acknowledgement of any kind that any group should or would be given collective treatment in
12 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
13 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
14 regarding the propriety of collective treatment. In the event that this Agreement is not approved
15 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named
16 Plaintiff will not be deemed to have waived, limited, or affected in any way any claims, rights,
17 or remedies in the Litigation, and Defendants will not be deemed to have waived, limited, or
18 affected in any way any of their objections or defenses in the Litigation.

19 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

20 **A. Release as to All PAGA Group Members.**

21 Upon Approval by the Court of this Settlement, Plaintiff and each member of the PAGA
22 Group, will release any and all claims and causes of action under the California Private
23 Attorneys' General Act of 2004 Cal. Lab. Code § 2698 (PAGA) against Defendants, named
24 defendants FMGLA and Encino, Defendants' parents, owners, subsidiaries, affiliates, their
25 insurers, attorneys, and all agents thereof ("Released Parties"), arising out of the facts and claims
26 asserted in Named Plaintiff's PAGA Notice and in the Complaint in the Litigation for civil
27 penalties under PAGA based upon any of Named Plaintiff's allegations or claims, under any
28 legal theory of liability, including claims that Defendants failed to pay all wages owed

(including minimum wage, overtime, and double time), failed to provide meal periods and rest periods, failed to provide accurate, itemized wage statements, failed to pay wages upon termination, or any other violation under Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 553, 558, 1174, 1174.5, 1182.1-1182.3, 1194-1197.1, 1198, 2802 and 2698, *et seq.*, and all applicable Wage Orders (“Released Claims”). This release extends only to the penalties available through PAGA and does not release individual claims.

B. Additional Release and Waiver of Claims by Plaintiff Only.

In addition to the release of Released Claims against the Defendants and Released Parties made by Plaintiff and all members of the PAGA Group, as set forth above, Plaintiff, in his individual capacity, agrees to release the Defendants and Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of execution of this Agreement including, but not limited to, claims arising from or related to his employment with Defendants and his compensation while an employee of the Defendants, or including, but not limited to, any alleged violation of:

- Title VII of the Civil Rights Act of 1964;
- The Civil Rights Act of 1991;
- Sections 1981 through 1988 of Title 42 of the United States Code, as amended;
- The Employee Retirement Income Security Act of 1974 (“ERISA”);
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- The Age Discrimination in Employment Act of 1967 (“ADEA”);
- The Workers Adjustment and Retraining Notification Act;
- The Occupational Safety and Health Act;
- The Sarbanes-Oxley Act of 2002;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- California Family Rights Act – Cal. Gov’t Code § 12945.2;
- California Fair Employment and Housing Act – Cal. Gov’t Code § 12900 et seq.;
- California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.;
- Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 et seq.;
- California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.;
- California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.;

- California Apprenticeship Program Bias Law – Cal. Lab. Code § 3070 et seq.;
- California Equal Pay Law – Cal. Lab. Code § 1197.5;
- California Whistleblower Protection Law – Cal. Lab. Code § 1102.5;
- California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394;
- Statutory Provision Regarding California Family and Medical Leave – Cal. Lab. Code § 233;
- Statutory Provisions Regarding California Electronic Monitoring of Employees – Cal. Lab. Code § 435;
- The California Occupational Safety and Health Act, as amended, California Labor Code § 6300 et seq., and any applicable regulations thereunder;
- California Obligations of Investigative Consumer Reporting Agencies Law – Cal. Civ. Code § 1786.10 et seq.;
- California Political Activities of Employees Law – Cal. Lab. Code § 1101 et seq.;
- California Domestic Violence Victim Employment Leave Law – Cal. Lab. Code § 230.1;
- California Court Leave Law – Cal. Lab. Code § 230;
- Those other provisions of the California Labor Code that lawfully may be released;
- Los Angeles AIDS-Based Discrimination Ordinance, Los Angeles Municipal Ordinance § 45.80 et seq.;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance;
- Any public policy, contract, tort, or common law; or
- Any basis for recovering costs, fees, or other expenses including attorneys’ fees incurred in these matters.

(“Plaintiff’s Released Claims”).

Plaintiff’s Released Claims include all claims, whether known or unknown. Even if Plaintiff discovers facts in addition to or different from those that he now knows or believes to be true with respect to the subject matter of Plaintiff’s Released Claims, those claims will remain released and forever barred. To effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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

1 **released party.**

2 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
3 release and discharge of Defendants and the Released Parties, Plaintiff expressly acknowledges this
4 Settlement is intended to include in its effect, without limitation, all claims Plaintiff does not know
5 or suspect to exist in Plaintiff's favor at the time of signing this Settlement, and that this Settlement
6 contemplates the extinguishment of any such claims. Plaintiff warrants that he has read this
7 Settlement, including this waiver of California Civil Code section 1542, and that Plaintiff has
8 consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this
9 Stipulation of Settlement and specifically about the waiver of section 1542, and that Plaintiff
10 understands this Settlement and the section 1542 waiver, and so Plaintiff freely and knowingly
11 enters into this Settlement. Plaintiff further acknowledges that Plaintiff later may discover facts
12 different from or in addition to those Plaintiff now knows or believes to be true regarding the matters
13 released or described in this Settlement, and even so Plaintiff agrees that the releases and
14 agreements contained in this Settlement shall remain effective in all respects notwithstanding any
15 later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of
16 any mistake in connection with the true facts involved in the matters, disputes, or controversies
17 released or described in this Settlement or with regard to any facts now unknown to Plaintiff relating
18 thereto. Plaintiff's Released Claims exclude any release of any claims not permitted to be released
19 by law. Nor does this prohibit Plaintiff from exercising Title VII rights by communicating with the
20 EEOC during an investigation. This general release shall not apply to any vested benefits accrued
21 by Plaintiff prior to the effective date of this Agreement under any compensation or benefit plans,
22 programs, and arrangements maintained by Defendants for the benefit of their employees and
23 subject to ERISA or with respect to any other compensation and benefits set forth in this Agreement.

24 **C. Publicity.**

25 The Named Plaintiff and his counsel agree that they have not and will not publish the
26 Resolution. More specifically, Named Plaintiff and his counsel agree that they will not report
27 the Settlement in any medium or in any publication, shall not post or report anything regarding
28 the claims of Named Plaintiff or the Settlement on any website, and shall not contact any

1 reporters or media regarding the Settlement. However, nothing in the provision shall be
2 construed from as preventing the Parties from taking following actions: (a) Named Plaintiff's
3 Counsel shall be allowed to refer to the Litigation and Resolution in other litigations to support
4 their adequacy as attorneys for a putative class or to justify an award of attorney's fees; (b) the
5 Parties shall have the right to disclose the Resolution as may be required under federal or state
6 tax and/or securities laws or under Generally Accepted Accounting Principles; (c) the Parties
7 may refer to the Resolution, describe its terms, and file the settlement agreement with the Court,
8 the California LWDA, and the Settlement Administrator in connection with any proceedings
9 which are reasonably necessary to obtain Approval of the Settlement; and, (d) the Parties or
10 their representatives may communicate with accountants or legal advisors regarding the
11 Resolution. Except for the previously listed exceptions, in response to any inquiries about the
12 Litigation, the Parties may state that "the case was resolved, and it was resolved confidentially."

13 **VI. SETTLEMENT ADMINISTRATOR**

14 Named Plaintiff and Defendant, through their respective counsel, have selected Phoenix
15 Class Action Administrator as the Settlement Administrator to administer the Resolution, which
16 includes but is not limited to distributing and responding to inquiries about the Notice of
17 Resolution and calculating all amounts to be paid from the Net Settlement Amount. Charges
18 and expenses of the Settlement Administrator, estimated to be no more than Five Thousand
19 Dollars (\$5,000.00) will be paid from the Settlement Amount. Any charges and expenses of the
20 Settlement Administrator greater than the amount allocated herein will come from the
21 Settlement Amount. If the actual Settlement Administrator fees are less than the Parties'
22 estimation, the difference between the actual and estimated Settlement Administrator fees will
23 be included in the Net Settlement Amount.

24 **VII. NOTICE**

25 Named Plaintiff and Defendants, through their respective attorneys, have jointly prepared
26 a Notice of PAGA Settlement (the "Notice"), in the form attached hereto as Exhibit "A" which
27 in substance will be provided to the members of the PAGA Group as follows:

28 As soon as practicable following Approval of the Resolution, but no later than thirty (30)

1 business days after the Effective Date, Defendant First will provide to the Settlement
2 Administrator the following information about each PAGA Group member: (1) name; (2) last
3 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
4 period; and (4) social security number (“PAGA List”).

5 The Settlement Administrator shall run all the addresses provided through the United
6 States Postal Service NCOA database (which provides updated addresses for any individual who
7 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
8 address) to obtain current address information. Within fifteen (15) business days after the
9 Settlement Administrator’s receipt of the PAGA List, the Settlement Administrator will mail
10 the Notice of Resolution together with a settlement payment to all PAGA Group members by
11 first-class United States mail, postage prepaid, with directions to the Postmaster to forward the
12 Notice and return all undeliverable Notices to the Settlement Administrator. For each Notice of
13 PAGA Settlement and settlement payment that is returned as undeliverable, the Settlement
14 Administrator shall promptly attempt to locate the Aggrieved Employee by performing an
15 additional skip trace and shall re-mail the Notice and settlement check no later than ten (10)
16 calendar days following receipt of the undeliverable Notice. The Notice will be provided in
17 English.

18 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

19 **A. Distribution Formula.**

20 Members of the PAGA Group will receive a lump sum payment as good and valuable
21 consideration for the waiver and release of claims set forth in Section V(A), above, in an amount
22 determined by the Settlement Administrator in accordance with the provisions of this
23 Agreement.

24 The lump sum payment to each member of the PAGA Group will be determined by
25 dividing the Net Settlement Amount by the total number of pay periods worked by all members
26 of the PAGA Group during the Settlement Period (the “Pay Period Amount”) and then
27 multiplying the Pay Period Amount by the number of pay periods worked by the individual
28 PAGA member.

1 **B. Funding of Resolution.**

2 The funding of the Settlement Amount will be completed at one time with funds
3 provided to and escrowed by the Settlement Administrator. The funds used for the Settlement
4 Amount shall be paid to the Claims Administrator by Defendant within thirty (30) business days
5 of the Effective Date.

6 If a PAGA Group member is deceased at the time of distribution, the Settlement
7 Administrator shall distribute the deceased PAGA Group member's Net Settlement Payment to
8 the deceased PAGA Group member's legal heir(s). In the event of a dispute as to the legal heir(s),
9 the Settlement Administrator shall notify the executor of the deceased PAGA Group member's
10 estate and attempt to place the deceased PAGA Group member's payment in escrow or similar
11 disposition such that any competing heirs may take whatever action they wish to resolve ultimate
12 disposition of such money and the Settlement Administrator and the Parties hereto may disclaim
13 any further interest in or obligation in relation to such money.

14 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
15 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip
16 trace search and, if another address is identified, shall mail the check to the newly identified
17 address. If the Settlement Administrator is unable to obtain a valid mailing address through this
18 process, the monies represented by the check shall be turned over according to the below
19 procedures.

20 Settlement checks will specifically indicate that they are void if not negotiated within
21 one hundred eighty 180 days of their issuance. Any settlement checks that remain uncashed one
22 hundred eighty (180) or more calendar days after issuance by the Settlement Administrator shall
23 be voided. The Settlement Administrator will remit the entire amount of each PAGA Group
24 member's uncashed Individual Settlement Payment to the California State Controller for deposit
25 in the Unclaimed Property Fund in the name of the PAGA Group member to whom the uncashed
26 Individual Settlement Payment was drafted.

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28 ////

1 **C. PAGA Enhancement Payment.**

2 Subject to Court approval, the Plaintiff shall receive an Enhancement Award of up to
3 Twenty Thousand Dollars and Zero Cents (\$20,000.00) for services as the Named Plaintiff. The
4 PAGA Enhancement Payment will be paid from the Gross Settlement Fund and Settlement
5 Amount and shall not constitute payment to any other PAGA Group members other than
6 Plaintiff. To the extent that the Court approves less than the amount of PAGA Enhancement
7 Award that Plaintiff's Counsel requests, the difference between the requested and awarded
8 amounts will be reallocated to the Net Settlement Amount, and Plaintiff shall not have the right
9 to revoke this Settlement, and it will remain binding.

10 Because it is the intent of the Parties that the PAGA Enhancement Payment represent
11 payment to Plaintiff for service to the PAGA Group, and not wages, the Settlement Administrator
12 will not withhold any taxes from the PAGA Enhancement Payment. The PAGA Enhancement
13 Payment will be reported on the IRS Form 1099, which the Settlement Administrator will provide
14 to Plaintiff and to the pertinent taxing authorities as required by law.

15 **D. Time for Distribution of the Attorney Fees, Costs, and LWDA Payment.**

16 The Settlement Administrator shall cause the Court approved attorney's fees and
17 Litigation costs and LWDA Payment to be paid at the same time and manner as the Settlement
18 Payments to the PAGA Group.

19 **IX. ESCALATOR CLAUSE**

20 Defendant estimates that there were approximately 4,448 pay periods during the PAGA
21 Period. In the event the number of pay periods exceeds this number by 5% for the PAGA Period,
22 the Escalator Clause will apply, increasing the amount of the Gross Settlement Amount by the
23 same percentage by which the number of pay periods exceeds 5% of this number.

24 **X. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

25 The amounts paid under this Agreement do not represent a modification of any
26 previously credited hours of service under any employee benefit plan, policy, or bonus program
27 sponsored by Defendants. Such amounts will not form the basis for additional contributions to,
28 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)

1 sponsored by Defendants, policies, or bonus programs. Any payments made under the terms of
2 this Resolution shall not be applied retroactively, currently, or on a going forward basis as salary,
3 earnings, wages, or any other form of compensation for the purposes of Defendants' benefit
4 plan, policy, or bonus program. Defendants retain the right to modify the language of its benefit
5 plans, policies, and bonus programs to effect this intent and to make clear that any amounts paid
6 pursuant to this Resolution are not for "hours worked," "hours paid," "hours of service," or any
7 similar measuring term as defined by applicable plans, policies, and bonus programs for purpose
8 of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or
9 benefits are not required by this Resolution.

10 **XI. PLAINTIFF'S COUNSEL'S ATTORNEYS' FEES AND LITIGATION COSTS**

11 Defendants shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's
12 Counsel shall not seek or receive an amount in excess of Eighty Three Thousand Three Hundred
13 Thirty Three Dollars (\$83,333.33.00) which represents 33-1/3% of the Settlement Amount for
14 all past and future attorneys' fees necessary to prosecute, settle, resolve any appeals, and
15 administer the Litigation and this Resolution. Any attorneys' fees or Litigation costs awarded
16 to Plaintiff's Counsel by the Court shall be deducted from the Settlement Amount for the
17 purpose of determining the Net Settlement Amount. This amount shall include all attorneys'
18 fees for which Named Plaintiff and Plaintiff's Counsel could claim under any legal theory
19 whatsoever.

20 Plaintiff's Counsel will also apply, and Defendant shall not oppose, to the Court for
21 reimbursement of reasonable Litigation costs expended in the prosecution of this matter in an
22 amount not to exceed \$15,000.

23 Should the Court approve a lesser percentage or amount of fees and/or Litigation costs
24 than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or
25 portions shall revert to the Net Settlement Amount.

26 ////

27 ////

28 ////

1 **XII. TAXATION AND ALLOCATION**

2 For withholding tax characterization purposes and payment of taxes, the Net Settlement
3 Amount shall be deemed and is allocated by the Parties as follows (“Net Settlement
4 Allocation”): 100% as penalties.

5 All PAGA Group members who cash their settlement check may receive an IRS Form
6 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in
7 compliance with IRS guidelines).

8 *Circular 230 Disclaimer.* Each of the Parties acknowledges and agrees that (1) no
9 provision of this Agreement, and no written communication or disclosure between or among the
10 Parties or their counsel and other advisers is or was intended to be, nor shall any such
11 communication or disclosure constitute or be construed or be relied upon as, tax advice within
12 the meaning of United States Treasury Circular 230 (31 CFR part 10, as amended); (2) each
13 party (a) has relied exclusively upon his, her or its own, independent legal and tax advisors for
14 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
15 Agreement based upon the recommendation of any other party or any Counsel or advisor to any
16 other party, and (c) is not entitled to rely upon any communication or disclosure by any other
17 counsel or advisor to any other party to avoid any tax penalty that may be imposed on that party;
18 and (3) no attorney or advisor to any other party has imposed any limitation that protects the
19 confidentiality of any such attorney’s or advisor’s tax strategies (regardless of whether such
20 limitation is legally binding) upon disclosure by the party of the tax treatment or tax structure
21 of any transaction, including any transaction contemplated by this Agreement. Neither
22 Plaintiff’s Counsel nor Defendants’ Counsel will provide tax or financial advice and the PAGA
23 Group are advised to seek independent professional advice as to the tax or financial
24 consequences of any recovery obtained on behalf of the PAGA Group.

25 **XIII. COURT APPROVAL**

26 This Agreement and the Resolution is contingent upon Approval by the Court. Named
27 Plaintiff and Defendants agree to take all steps as may be reasonably necessary to secure
28 Approval of the Resolution, to the extent not inconsistent with the terms of this Agreement, and

1 will not take any action adverse to each other in obtaining Court Approval of the Resolution in
2 all respects.

3 Simultaneously with filing a joint stipulation and/or motion for Approval of the
4 Settlement by the Court, Plaintiff's Counsel shall submit a copy of the Settlement to the LWDA,
5 as required by Labor Code § 2699(1)(2).

6 **XIV. APPRISAL AND CERTIFICATION BY THE SETTLEMENT**
7 **ADMINISTRATOR.**

8 The Settlement Administrator shall keep Plaintiff's Counsel and Defendants' Counsel
9 apprised of all distributions from the Settlement Amount. Upon completion of administration
10 of the Settlement, the Settlement Administrator shall provide written certification of such
11 completion to Plaintiff's Counsel and Defendants' Counsel. The Settlement Administrator shall
12 also provide Defendants with a final accounting, including the names of payees and Net
13 Settlement Payments.

14 **XV. MISCELLANEOUS PROVISIONS**

15 **A. Stay of Litigation.**

16 The Parties agree that upon full execution of this Settlement, the matter is stayed
17 in its entirety except for any filings and/or motion work necessary to attain Court approval of the
18 Settlement. Should the Court not grant approval of the Motion For Approval of PAGA
19 Representative Action Settlement, or of the Stipulation For Approval Of The PAGA
20 Representative Action Settlement, the stay will be lifted thirty (30) days thereafter and the Parties
21 will be restored to their positions prior to the Settlement and the Settlement shall be null and
22 void. Upon mutual agreement by the Parties, after this thirty (30) days expires, the Parties may
23 agree to additional extensions of this stay in order to work towards obtaining Court approval, and
24 this agreement between the Parties must be in writing.

25 **B. Interpretation of the Agreement.**

26 This Agreement constitutes the entire agreement between Named Plaintiff and
27 Defendants. Except as expressly provided herein, this Agreement has not been executed in
28 reliance upon any other written or oral representations or terms, and no such extrinsic oral or

1 written representations or terms shall modify, vary, or contradict its terms. In entering into this
2 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
3 may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and
4 enforced under the laws of the State of California, both in its procedural and substantive aspects,
5 without regard to its conflict of laws provisions. Any claim arising out of or relating to the
6 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
7 Court of the State of California for the County of Los Angeles and Named Plaintiff and
8 Defendants hereby consent to the personal jurisdiction of the Court over them solely in
9 connection therewith. The foregoing is only limited to disputes concerning this Agreement and
10 in no way limits or negates the enforceability and effect of any other agreements signed by
11 employees of Defendants. Named Plaintiff, on his own behalf and on behalf of the PAGA
12 Group, and Defendants participated in the negotiation and drafting of this Agreement and had
13 available to them the advice and assistance of independent counsel. As such, neither Named
14 Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed
15 against the other.

16 The terms and conditions of this Agreement constitute the exclusive and final
17 understanding and expression of all agreements between Named Plaintiff and Defendants with
18 respect to the Resolution of the Litigation. The Agreement may be modified only by a writing
19 signed by counsel for all Parties or their successors-in-interest.

20 **C. Further Cooperation.**

21 Named Plaintiff and Defendants and their respective attorneys shall proceed diligently
22 to prepare and execute all documents, to seek Approval from the Court, and to do all things
23 reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

24 **D. Confidentiality of Documents.**

25 Named Plaintiff, the Settlement Administrator, and Plaintiff's Counsel shall maintain
26 the confidentiality of all documents, deposition transcripts, declarations, and other information
27 obtained in the Litigation, unless necessary for appeal or such documents are ordered to be
28 disclosed by the Judge or by a subpoena.

1 **E. Counterparts.**

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

5 **F. Authority.**

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

8 **G. No Third-Party Beneficiaries.**

9 Named Plaintiff, members of the PAGA Group, Defendants, and Released Parties are
10 direct beneficiaries of this Agreement, but there are no third-party beneficiaries.

11 **H. Force Majeure.**

12 The failure of any party to perform any of its obligations hereunder shall not subject such
13 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
14 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
15 floods, wars, interruptions or delays in transportation, power outages, labor disputes or
16 shortages, shortages of material or supplies, governmental laws, restrictions, rules or
17 regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar
18 or different circumstances or causes beyond the reasonable control of such party.

19 **I. Deadlines Falling on Weekends or Holidays.**

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

22 **J. Severability.**

23 In the event that any one or more of the provisions contained in this Agreement shall for
24 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
25 unenforceability shall in no way effect any other provision if Plaintiff and Defendants, through
26 their counsel and on behalf of the PAGA Group, mutually elect in writing to proceed as if such
27 invalid, illegal, or unenforceable provision had never been included in this Agreement.

28 ////

1 **K. Defendants' Fees and Costs**

2 All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be
3 borne by Defendants.

4
5 Dated: _____, 2022

SHIMON BROSHINSKY, *Plaintiff*

6
7 

8 Dated: March 28, 2022, 2022

9 By: Nasser Watar, on behalf of
10 FIRST MOTOR GROUP OF ENCINO,
LLC, *Defendant*

11
12 

13 Dated: March 28, 2022, 2022

14 By: Nasser Watar, on behalf of
TROPHY AUTOMOTIVE DEALER
GROUP, LLC, *Defendant*

15 APPROVED AS TO FORM ONLY:

16 DATE: March 9, 2022

FISHER & PHILLIPS LLP

17
18 By: 

TODD B. SCHERWIN
COLIN P. CALVERT
JOEL MOON
Attorneys for Defendants
FIRST MOTOR GROUP OF ENCINO LLC dba
MERCEDES BENZ OF ENCINO; and
TROPHY AUTOMOTIVE DEALER GROUP
LLC

23 DATE: March 9, 2022

BOYAMIAN LAW, INC.

24
25 By: _____

MICHAEL H. BOYAMIAN
HEATHER ZERMENO
Attorneys for Plaintiff
SHIMON BROSHINSKY

K. Defendants' Fees and Costs

All of Defendants' own legal fees, costs, and expenses incurred in this Action shall be borne by Defendants.

Dated: 3/20/2022, 2022

DocuSigned by:

Shimon Broshinsky

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SHIMON BROSHINSKY, Plaintiff

Dated: _____, 2022

By: _____, on behalf of
FIRST MOTOR GROUP OF ENCINO,
LLC, Defendant

Dated: _____, 2022

By: _____, on behalf of
TROPHY AUTOMOTIVE DEALER
GROUP, LLC, Defendant

APPROVED AS TO FORM ONLY:

DATE: March 9, 2022

FISHER & PHILLIPS LLP

By:

TODD B. SCHERWIN
COLIN P. CALVERT
JOEL MOON
Attorneys for Defendants
FIRST MOTOR GROUP OF ENCINO LLC dba
MERCEDES BENZ OF ENCINO; and
TROPHY AUTOMOTIVE DEALER GROUP
LLC

DATE: March 9, 2022

BOYAMIAN LAW, INC.

By:

MICHAEL H. BOYAMIAN
HEATHER ZERMENO
Attorneys for Plaintiff
SHIMON BROSHINSKY

**PROOF OF SERVICE
(CCP § 1013(a) and 2015.5)**

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On March 9, 2022, I served the foregoing document entitled **STIPULATION OF SETTLEMENT** on all the appearing and/or interested parties in this action as follows:

Michael H. Boyamian
Katrina Castillo Espina
Alfred Movsesyan
BOYAMIAN LAW, INC.
550 North Brand Boulevard, Suite 1500
Glendale, California 91203

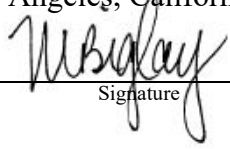
Attorneys for Plaintiff
Telephone: (818) 547-5300
Fax: (818) 547-567
E-Mail: rmichael@boyamianlaw.com
katrina@boyamianlaw.com
alfred@boyamianlaw.com

- ☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.
- ☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.
- ☒ **[by ELECTRONIC SERVICE]** - Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification address listed above.
- ☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Express Network, whose business address is 1605 W. Olympic Boulevard, Suite 800, Los Angeles, CA 90015.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 9, 2022, at Los Angeles, California.

MELODY BIGLAY

Print Name

By: 

Signature