SETTLEMENT AGREEMENT AND RELEASE OF THE PAGA CLAIMS

This Settlement Agreement and Release of the PAGA Claims ("PAGA Settlement Agreement") is made and entered into by and between Plaintiff Katherine Hopper ("Hopper" or "Plaintiff"), on behalf of the State of California and other Aggrieved Employees, and Defendant BBB Orange County LLC ("BBB" or "Defendant"), (collectively, the "Parties"), and is approved by their respective counsels of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions.

1. "Agreement," "Stipulation," "PAGA Settlement Agreement" or "Settlement Agreement," as used in this document shall mean this Settlement Agreement, including any attached Exhibits.

2. "Aggrieved Employees," "PAGA Employees," or "PAGA Members" means and refers to all current and former non-exempt marketing staff employees who worked for BBB Orange County LLC from May 7, 2020 through the Effective Date of the Settlement estimated to be ~10 employees.

3. "Aggrieved Employees Settlement Proceeds" means the twenty-five percent (25%) of the Net Settlement Amount in civil penalties that shall be paid to the Aggrieved Employees.

4. "Complaint" (also referred to as the "Action" or "PAGA Action") means and refers to Case No. 30-2021-01199454-CU-OE-CJ pending in the Superior Court, County of Orange, entitled "*Katherine Hopper et al. v. FM Orange County LLC et al*" which alleges the Operative Claims, including the First Amended Complaint filed on July 12, 2021 which added a cause of action under the Private Attorneys General Act ("PAGA") and the Second Amended Complaint filed on October 7, 2022.

5. "Court" (or "Judge") means the California Superior Court, County of Orange.

6. "Defendant" (or "BBB") means and refers to BBB Orange County, LLC, a California limited liability company, which operates an automotive dealership in California.

7. "Defendant's Counsel" means and refers to Scali Rasmussen PC, which represents BBB in this Action.

8. "Effective Date" means the date the Court enters the Order approving the PAGA Settlement.

9. "Individual Defendants" refers to Tim Rogers, Mark Thomas, and Chris Berlin named in the Action.

10. "LWDA Settlement Proceeds" means the seventy-five percent (75%) of the Net Settlement Amount in civil penalties that shall be paid to the Labor Workforce and Development Agency.

11. The "Net Settlement Amount" is defined as the Settlement Amount less attorneys' fees, litigation costs advanced by Plaintiff's Counsel and Settlement Administrator costs.

12. "Notice" or "Employee Notice" means the notice that will be sent to the Aggrieved Employees after the PAGA settlement is approved by the Court, and shall contain the information set forth in the form attached hereto as Exhibit "A."

13. "Operative Claims" means and refers to claims under the twelfth cause of action in the Action, for civil penalties under PAGA, based on or arising from the facts alleged in the PAGA Action or PAGA Notice, including but not limited to misclassification, failure to pay minimum wage and overtime, failure to provide lawful meal and rest periods or compensation in lieu thereof, failure to provide accurate wage statements and maintain accurate time records, failure to reimburse business expenses, failure to timely pay wages during employment and upon separation, and for violations related to Labor Code sections 201 - 203, 204, 210, 226, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699 and 2802.

14. "Order" refers to the order of the Court granting approval of this Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties.

15. "PAGA Period" means the time period from May 7, 2020, through the Effective Date of this Settlement.

16. "Parties" or "Settling Parties" mean Plaintiff, the Aggrieved Employees, and Defendant BBB, collectively.

17. "Plaintiff's Counsel" is Thomas Diachenko of Law Offices of Thomas M. Diachenko, APC.

18. "Released Parties" means Defendant BBB and its owners, officers, directors and employees, including but not limited to the Individual Defendants.

19. "Settlement Administrator" means and refers to the entity that will administer the settlement, Phoenix.

20. "Settlement Amount" means the maximum settlement amount that Defendant will pay in connection with this settlement, which is $6,000.00.

B. General.

21. On May 7, 2021, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code alleged to have been violated. The LWDA did not assert jurisdiction over the claims.

22. Defendants deny Plaintiff's claims and allegations, deny any liability or wrongdoing of any kind associated with the claims alleged in the Action, and deny that Plaintiff can proceed with her claims on a representative basis.

23. The Parties have conducted informal discovery, and exchanged information and documents relating to the Operative Claims. Based on the foregoing, the Parties, through their counsel are of the opinion that the settlement with Defendant BBB for the consideration and on the terms set forth in this Settlement Agreement is not "unjust, arbitrary and oppressive, or confiscatory" and in the best interests of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with

litigation and trial, various defenses asserted by Defendants, and numerous potential appellate issues.

24. The Parties agree that neither the Parties' settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to the terms of the settlement and Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

C. Terms of Settlement.

25. The financial terms of the settlement are as follows:

(a) **Settlement Amount:** The Parties agree to settle the Operative Claims in this Action for the maximum of $6,000.00 ("Settlement Amount"). This Settlement Amount is inclusive of all settlement payments to the State of California and Aggrieved Employees; Plaintiff's Counsel's attorneys' fees and litigation costs (as related to the PAGA claims only) and Settlement Administrator costs.

(b) **Settlement Administrator Costs:** The costs associated with settlement administration (e.g. preparing and mailing payments to LWDA and Aggrieved Employees, tax documentation, etc.) subject to the Court's review and approval shall be paid from the Settlement Amount and shall not exceed $1,000.

(c) **Attorneys' Fees and Costs:** The Parties agree that, subject to the Court's review and approval, Plaintiff's Counsel will be paid $1,000 total from the Settlement Amount for attorneys' fees, and litigation costs.

(d) **Allocation of Net Settlement Amount:** After deducting the amounts specified in items 24(b) and (c) from the Settlement Amount, the balance ($4,000) remaining will form the Net Settlement Amount and will be paid to the Labor and Workforce Development Agency ("LWDA") and the Aggrieved Employees in the following proportion: 75 percent (totaling $3,000) to the LWDA ("LWDA Settlement Proceeds") and 25 percent ($1,000) to the Aggrieved Employees ("Aggrieved Employees Settlement Proceeds"). The Aggrieved Employees will receive a *pro rata* portion of the Aggrieved Employees Settlement Proceeds, determined based on the pay periods that he or she worked for Defendant in the State of California during the PAGA Period, to be calculated as follows: the Aggrieved Employees Settlement Proceeds will be divided by the total number of Pay Periods worked by all PAGA employees during the PAGA Period to yield the "Per Pay Period Amount," and then each of the Aggrieved Employees' individual number of Pay Periods will be multiplied by the Per Pay Period Amount to yield his or her "Individual Settlement Payment." Individual Settlement Payments shall be paid to each of the Aggrieved Employees by way of a check ("Individual Settlement Check").

26. The Parties agree that the settlement satisfies the requirements of Labor Code section 2699 of not being "unjust, arbitrary and oppressive, or confiscatory" in addition to it being a fair and reasonable settlement of the civil penalties afforded pursuant to the PAGA and will so represent to the Court.

D. Release by the Aggrieved Employees.

27. Upon the Court's entry of the Order approving the PAGA settlement, the Aggrieved Employees will forever completely release and discharge the Released Parties of the Operative Claims for civil penalties under Labor Code § 2699 that were alleged in the Action or could have been alleged based on the facts asserted in the Action ("PAGA Released Claims"). The time period governing these PAGA Released Claims shall be between May 7, 2020, through the date of the Order ("Release Period").

28. Each Aggrieved Employee will be deemed to have made the foregoing Release as if by manually signing it.

E. Release by Plaintiff

29. Plaintiff has entered into a separate Individual Settlement Agreement with Defendant for her individual (non-PAGA) claims which were submitted to arbitration, in exchange for a full release of all claims, known and unknown, which shall also have the same Effective Date. The Parties agree that Plaintiff's separate individual settlement of the claims submitted to binding arbitration shall not affect or limit Plaintiff's ability or standing to assert the PAGA claims on behalf of all aggrieved employees and the State of California in this Action and for this Settlement Agreement.

F. Settlement Approval and Implemental Procedures.

30. The Parties shall jointly seek approval of the Settlement via a proposed stipulation and order, including the PAGA penalties, Plaintiff's Counsel's attorneys' fees and costs, and Settlement Administrator costs.

31. Upon the Court's entry of the Order approving the PAGA Settlement, the Settlement Administrator will timely perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all former Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and Individual Settlement Checks to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA, Plaintiff's Counsel and Plaintiff.

32. Upon the Court's entry of the Order, all Aggrieved Employees will: (i) be bound by the terms and conditions of this Agreement, and the releases set forth herein; and (ii) be entitled to receive a share of the Net Settlement Amount, as set forth herein.

33. Within ten (10) days after the Court has entered the Order approving the PAGA Settlement, Defendant BBB will provide to the Settlement Administrator a list of the names, last known address, phone number and Social Security number of each Aggrieved Employee. The Settlement Administrator will perform a National Change of Address ("NCOA") search on all the Aggrieved Employees to update the addresses of the Aggrieved Employees.

34. BBB shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator in relation to this settlement, within fifteen (15) days after the Court has approved the settlement. All settlement amounts to be paid to Plaintiff, Aggrieved Employees,

Plaintiff's Counsel, the Settlement Administrator, and the California Labor and Workforce Development Agency shall be paid from this Qualified Settlement Fund.

35. The Settlement Administrator shall deduct the amount of approved attorneys' fees and costs, and the Settlement Administrator's costs from the Settlement Amount, to arrive at the Net Settlement Amount, which will be distributed as set forth herein.

36. Within ten (10) days of receiving the wire transfer from Defendant for each of the payments referenced herein, the Settlement Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's Counsel and LWDA, as set forth in the payment plan herein. The Individual Settlement Checks mailed to the Aggrieved Employees will be accompanied with a letter explaining the payment and deadline to cash the check ("Employee Notice"), and this letter will be in substantially the form that that is attached hereto as Exhibit "A." Together, an Individual Settlement Check that is mailed to the Aggrieved Employees with the Employee Notice is referred to as a "Payment Packet." Should any of the Employee Notices be returned as undeliverable, the Settlement Administrator will have ten (10) business days after it receives the returned undeliverable mail to search for a more current address for the Aggrieved Employees via a skip trace or other reasonable method and to re-mail the Payment Packets to the traced address.

37. All Individual Settlement Checks will expire one hundred and eighty (180) calendar days after the initial mailing of the original Payment Packets to the PAGA Employees, and thereafter, shall be cancelled. **Any check that is required to be resent to PAGA Employee shall expire one hundred eighty (180) calendar days after the second mailing of the check.** If any funds remain in the Settlement Administration Account as a result of cancelled Individual Settlement Checks, such funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of each PAGA Employee whose check is voided. All duties set forth herein shall be included in the Settlement Administration Costs and paid from the Gross Settlement Amount. The release nevertheless will be binding upon Aggrieved Employees who do not cash their checks within the 180-day period. Neither Defendant, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks.

38. All Settlement payments to Aggrieved Employees will be treated as payments in settlement of non-wage (civil penalty) claims and reported on IRS 1099 forms and corresponding state forms.

39. Within thirty (30) calendar days after the Settlement Administrator distributes the Settlement Amount, the Settlement Administrator shall provide Plaintiff a declaration confirming the same, and within fourteen (14) calendar days after Plaintiff receives the Settlement Administrator's declaration, Plaintiff shall file a request for dismissal with prejudice of the Action for BBB, Tim Rogers, Mark Thomas, and Chris Berlin, only.

40. Pursuant to Code of Civil Procedure section 664.6, after entry of the request for dismissal of the Action, with prejudice, the Court shall have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the PAGA Settlement Agreement, (ii) Settlement Administrator matters, and (iii) such matters as may be appropriate under court rules or applicable law, or as set forth in the PAGA Settlement Agreement. In the event that one Party institutes any legal action or other proceeding against any other Party to enforce the provisions of this PAGA Settlement Agreement or to declare rights and obligations under this

Agreement, the successful Party will be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs.

G. Miscellaneous Provisions.

41. **Voiding the Agreement:** The Court's (i) refusal to approve the PAGA Settlement and/or (ii) making of a fundamental change of the Parties' settlement shall render the entire Settlement Agreement voidable and unenforceable as to all Parties herein at the option of either Plaintiff or BBB. Notwithstanding, in the event the Court does not approve the PAGA Settlement, the Parties agree that they will attempt in good faith to resolve any concerns raised by the Court.

42. **Waiver**: The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

43. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

44. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this PAGA Settlement Agreement shall use their best efforts, including all efforts contemplated by this PAGA Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this PAGA Settlement Agreement, the Parties, through their respective counsel shall take all necessary steps to secure the Court's approval of the PAGA Settlement, and the Order including preparing and filing the Stipulation and Proposed Order seeking approval, within two (2) weeks of the full execution of this Agreement.

45. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have 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 released and discharged by this PAGA Settlement Agreement.

46. **No Admission:** Defendants deny any and all liability to the alleged Aggrieved Employees, including Plaintiff, and the LWDA in this Lawsuit, as to any and all causes of action that were asserted or that could have been asserted in this Action based on the same facts as it pertains to the PAGA. Nonetheless, Defendant wishes to settle and compromise the Operative Claims at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiff, has determined that it is desirable and beneficial that Plaintiff's representative PAGA claims be settled in the manner and upon the terms and conditions set forth in this Agreement.

47. **Binding Settlement:** Nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant BBB or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement

Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement.

48. **Enforcement Actions:** Except as otherwise provided in this PAGA Settlement Agreement, in the event that one or more of the Parties to this Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this PAGA Settlement Agreement or to declare rights and/or obligations under this Settlement Agreement, the successful or prevailing Party or Parties shall be entitled to recover from the unsuccessful or non-prevailing Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

49. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Thomas M. Diachenko, Esq.
Law Offices of Thomas M. Diachenko, APC
1916 Third Avenue
San Diego, CA 92101
Phone: (619) 699-5870
Fax: (619) 699-5871
E-mail: Thom@DiachenkoLaw.com

To Defendant BBB:

Christian Scali, Esq.
Jasmin Bhandari, Esq.
300 S. Grand Ave, Ste. 2750
Los Angeles, CA 90071
Phone: (213) 239-5622
Fax: (213) 239-5623
Email: cscali@scalilaw.com

50. **Construction:** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement Agreement.

51. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

52. **Modification:** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement

Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

53. **Choice of Law:** This Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules.

54. **Integration Clause:** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

55. **Binding On Assigns:** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

56. **Counterparts:** This PAGA Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

Dated: December 20, 2023 **PLAINTIFF:**

KATHERINE HOPPER

Dated: ~~December __, 2023~~ JANUARY 4, 2024 **DEFENDANT:**

BBB ORANGE COUNTY, LLC

By: ________________

THOMAS VITALE, CFO

EXHIBIT A

<u>Exhibit A</u>

Employee Notice

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Address>>
<<City>> <<State>> <<Zip>>

Re: PAGA Settlement Payment for the case of: *Katherine Hopper, et. al. v. FM Orange County., et al.*, Case No. 97-2021-00041803-CU-OE-CTL

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> ("PAGA Settlement Check"). This check is your portion of payment from the settlement of the PAGA claims asserted in the lawsuit entitled Katherine Hopper, et. al. v. FM Orange County., et al., Case No. 97-2021-00041803-CU-OE-CTL, filed on May 3, 2021 ("Action"), pending in the Superior Court of California for the County of Orange ("Court").

The lawsuit was filed by Katherine Hopper ("Plaintiff"), a former employee of Defendant BBB Orange County LLC ("Defendant"), on behalf of the State of California with respect to herself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. ("PAGA"). Plaintiff alleged that Defendant violated the California Labor Code and Industrial Welfare Commission Wage Orders by failing to properly pay all wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, provide accurate itemized wage statements, reimburse business expenses and timely pay all wages owed during employment and upon separation of employment. Defendant denies these allegations and denies any wrongdoing of any kind associated with these allegations.

A settlement was reached between Plaintiff and Defendant, on behalf of Plaintiff, the State of California, and the following aggrieved employees: all current and former non-exempt marketing staff employees who worked for BBB Orange County LLC from January 9, 2021, through [DATE] ("PAGA Employees").

On <<Approval Date>>, the PAGA settlement was approved by the Court, with a portion to be paid to the State of California and a portion to be paid to the PAGA Employees. You are receiving a portion of the settlement (the enclosed Individual Settlement Check) because you have been identified as a PAGA Employee. Your Individual Settlement Check is based on the total number of pay periods that you worked as a PAGA Employee during the period between January 9, 2021 through [DATE] ("PAGA Period"). The Individual Settlement Check is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

By way of this PAGA settlement, you are deemed to fully release and forever discharge the Released Parties from the Released Claims. The "Released Parties" means Defendants and each of their past, present, and future officers, employees, attorneys, agents, assigns, insurers, representatives, counsel, benefit plan administrators, other administrators, successors, parent companies, subsidiaries, related entities, shareholders, and/or directors. The "Released Claims" means and refers to claims for civil penalties under the PAGA, California Labor Code § 2698, et seq., that are based upon or arise from the factual allegations in the operative Complaint in the Action and/or Plaintiff's PAGA notice to the California Labor and Workforce Development Agency, arising during the PAGA Period, including penalties for the failure to properly pay all minimum wages, overtime wages, provide lawful meal periods or compensation in lieu thereof, authorize or permit lawful rest breaks or provide compensation in lieu thereof, provide accurate itemized wage statements, reimburse business expenses, and timely pay all wages during employment and upon separation of employment, and for violation of and/or based on California Labor Code sections 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2699 and 2802.

Notwithstanding the proceeding provisions, no claims for unpaid or underpaid wages or any other individual claims which may exist are included in the PAGA Settlement. Therefore, no such claims are waived as this PAGA Settlement is without prejudice to the pursuit of any such claims.

Your PAGA Settlement Check is valid for 180 calendar days from the date of issuance, and if you do not cash, deposit, or otherwise negotiate the check within the 180-day timeframe, your PAGA Settlement Check will be cancelled and the funds will be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the PAGA Employee whose check is voided.

Do <u>not</u> call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions concerning the settlement, you may contact the Settlement Administrator at <<INSERT CONTACT INFORMATION>>.