CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Class Action and PAGA Settlement Agreement and Release of Claims ("Agreement") is made by and between Plaintiffs Cristal Lombera and Jesus Cabrera ("Plaintiffs," "Plaintiff Lombera," and "Plaintiff Cabrera"), on behalf of themselves and on behalf of the State of California, all similarly-situated individuals, and all allegedly aggrieved employees, and Defendant Creekside Auto Group dba Capitol Toyota ("Defendant"), subject to the approval of the Court, that the Settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions to be filed for approval by the Court. Plaintiffs and Defendant collectively are referred to in this Agreement as the "Parties."

I. DEFINITIONS

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

1. "Action" means the lawsuit alleging wage and hour violations against Defendant captioned *Lombera v. Creekside Auto Group* initiated by Plaintiff Lombera on May 10, 2023 and pending in Superior Court of the State of California, County of Santa Clara (Case Number 23CV415661) (Consolidated with Case Numbers 23CV418331 and 24CV428865).

2. "Administrator" means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

3. "Aggrieved Employees" means all current and former employees employed by Defendant as hourly-paid or non-exempt employees in the State of California during the PAGA Period.

4. "Class" or "Class Member" means all current and former employees employed by Defendant as hourly-paid or non-exempt employees in the State of California during the Class Period.

5. "Class Counsel" means Justice Law Corporation and Wilshire Law Firm.

6. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the amounts to be paid to Class Counsel for fees and expenses, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.

7. "Class Data" means Class Members' identifying information in Defendant's possession, including the Class Member's: (a) full name; (b) last-known mailing address; (c) Social Security Number; and (d) number of workweeks within the Class Period and pay periods within the PAGA Period.

8. “Class Notice” means the Notice of Proposed Settlement of Class Action and Hearing Date to be provided to the Class Members by the Administrator in English and Spanish in the form set forth herein as **Exhibit A** to this Agreement (other than formatting changes to facilitate printing by the Administrator).

9. “Class Period” means the period of time from May 10, 2019 through June 12, 2024.

10. “Class Representative Service Payments” means the payment to the Class Representatives, Cristal Lombera and Jesus Cabrera, for initiating the Action and providing services in support of the Action.

11. “Court” means the Superior Court of California, County of Santa Clara.

12. “Defendant” means Creekside Auto Group dba Capitol Toyota.

13. “Defense Counsel” means Hirschfeld Kraemer LLP.

14. “Effective Date” means thirty (30) calendar days after all the following have occurred: (a) this Agreement and the contemplated settlement receive final approval from the Court; and (b) the Judgment becomes Final.

15. “Final” means the last of the following dates: (a) the first business day following the last date on which a notice of appeal from the Judgment may be filed and none is filed; or (b) if Judgment is entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.

16. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.

17. “Gross Settlement Amount” means $2,500,000 to be paid by Defendant as provided by this Agreement. This amount is an all-in amount without any reversion to Defendant or any of the Released Parties and shall be inclusive of all amounts due from Defendant under the terms of this settlement, including payments of Individual Class Payments to the Participating Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Settlement Administration Expenses, and PAGA Payment contemplated in this resolution in this Agreement.

18. “Individual Class Payment” means each Participating Class Member’s share of the Net Settlement Amount based on their weeks worked during the Class Period as provided by this Agreement.

19. “Individual PAGA Payment” means each Aggrieved Employee’s individual share of twenty-five percent (25%) of the PAGA Payment that is to be distributed to Aggrieved Employees based on their pay periods worked during the PAGA Period.

20. “Judgment” means the Final Approval Order and Judgment entered by the Court substantially.

21. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

22. “LWDA Payment” means the seventy-five percent (75%) portion of the PAGA Payment payable to the LWDA as its share of the settlement of civil penalties paid under this Agreement pursuant to PAGA.

23. “Net Settlement Amount” means the Gross Settlement Amount less the Court-approved amount for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Settlement Administration Expenses, and LWDA Payment.

24. “Non-Participating Class Member” means a Class Member who submits a valid and timely Request for Exclusion.

25. “PAGA Payment” means the portion of the Gross Settlement Amount, which shall be allocated seventy-five percent (75%) to the LWDA as the LWDA’s share of the settlement of civil penalties paid under this Agreement pursuant to PAGA (“LWDA Payment”) and twenty-five percent (25%) to be distributed to the Aggrieved Employees as their Individual PAGA Payments based on their pay periods worked during the PAGA Period.

26. “PAGA Period” means the period of time from February 16, 2022 through June 12, 2024.

27. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion.

28. “Preliminary Approval of the Settlement” means the Court’s Order Granting Preliminary Approval of the Settlement.

29. “Released Class Claims” means all claims that were asserted, related, or could have been asserted based on the allegations in the Operative Complaint arising at any time during the Class Period, whether known or unknown, contingent, or vested, of any kind whatsoever, in law or in equity. This includes, but is not limited to, claims for: (a) failure to pay overtime and minimum wages; (b) failure to pay all regular rate wages due (including sick leave pay); (c) failure provide meal and rest periods and associated premium payments; (d) untimely pay of wages during employment and upon termination; (e) inaccurate wage statements; (f) failure to maintain complete and accurate payroll records; (g) failure to provide one day of rest; (h) failure to keep payroll records in a central location; (i) failure to reimburse for necessary business expense; and (j) unfair business practices stemming from these alleged Labor Code violations.

30. “Released PAGA Claims” means all claims identified, pleaded, related, or otherwise set out in or that could have been brought based on the facts alleged in Plaintiffs’ letters to the LWDA and/or the Operative Complaint that occurred the PAGA Period. This includes, but is not limited to, claims for: (a) unpaid overtime; (b) unpaid meal and rest break premiums; (c) unpaid minimum wages; (d) penalties for non-compliant wage statements; (e) waiting time penalties; (f) failure to pay final wages in a timely manner; (g) unreimbursed business expenses; (h) failure to provide and properly pay sick leave; (i) failure to provide one day of rest; (j) failure to keep payroll records in a central location; (k); failure to timely pay wages during employment; and (l) penalties under PAGA.

31. “Released Parties” means Defendant and its past or present parents, predecessors, successors, all affiliates, subsidiaries, officers, directors, members, agents, employees, principals, representatives, accountants, insurers and reinsurers, auditors, consultants, attorneys, and stockholders.

32. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement; or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Class Notices are resent after having been returned undeliverable to the Administrator shall have an additional fourteen (14) calendar days beyond the Response Deadline has expired.

33. “Request for Exclusion” means a letter submitted by a Class Member to exclude himself or herself from the Class Settlement submitted in accordance with the instructions in the Class Notice. Such a written request will have no effect on one’s inclusion in the PAGA Settlement.

34. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement.

II. RECITALS

1. On February 16, 2023, Plaintiff Lombera, represented by Justice Law Corporation, provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions.

2. On May 10, 2023, Plaintiff Lombera filed a representative PAGA action in the Superior Court of California, County of Santa Clara, predicated on Defendant’s alleged: (a) failure to pay minimum and overtime wages; (b) failure to provide meal periods and rest breaks; (c) failure to timely pay wages during employment; (d) failure to timely pay wages upon termination; (e) failure to provide complete and accurate wage statements; and (f) failure to reimburse business expenses (Case No. 23CV415661).

3. On June 30, 2023, Plaintiff Cabrera, represented by Wilshire Law Firm, filed a wage-and- hour class action lawsuit in the Superior Court of California, County of Santa Clara, alleging violations of: (a) Labor Code sections 204, 1194, 1194.2, and 1197 (failure to pay minimum and straight time wages); (b) Labor Code sections 1194 and 1198 (failure to pay overtime wages); (c) Labor Code sections 226.7 and 512 (failure to provide meal periods); (d) Labor Code section 226.7 (failure to authorize and permit rest periods); (e) Labor Code sections 201, 202, and 203 (failure to timely pay final wages at termination); (f) Labor Code section 226 (failure to provide accurate itemized wage statements); (g) Labor Code section 2802 (failure to indemnify employees for expenditures); and (h) Business & Professions Code section 17200, *et seq*. (Case No. 23CV418331).

4. On May 24, 2023, Plaintiff Cabrera provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contentions.

5. On January 10, 2024, Plaintiff Cabrera filed a representative PAGA action in the Superior Court of California, County of Santa Clara, predicated on Defendant's alleged: (a) failure to pay for all hours worked, including minimum, straight time, and overtime wages; (b) failure to provide meal periods; (c) failure to authorize and permit rest breaks; (d) failure to pay all earned wages twice per month; (e) failure to maintain accurate records of hours worked and meal periods; (f) failure to timely pay all wages at termination; (g) failure to furnish accurate itemized wage statements; (h) failure to indemnity for necessary expenditures; and (i) failure to produce requested employment records (Case No. 24CV428865).

6. After engaging in discovery, investigations, and negotiation, the Parties remotely attended mediation with the mediator Lynn Frank on March 14, 2024, ultimately resulting in the Parties reaching a tentative global settlement.

7. In line with the settlement, Plaintiff Lombera filed an amended and consolidated class and representative complaint that: (a) added wage-and-hour class action causes of action; (b) adjusted the "class" definition; and (c) adjusted the "aggrieved employees" definition ("Operative Complaint").

8. Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged.

9. The Parties conducted significant investigation and discovery of the facts and law both before and after the Action was filed. Defendant produced several documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, and meal and rest breaks along with payroll, timekeeping, and operational policies. As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and

information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks and pay periods. Plaintiffs also located and interviewed Class Members who worked for Defendant throughout the Class Period. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130.

10. The Court has not granted class certification.

11. The Parties, Class Counsel, and Defense Counsel represent they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

1. **Gross Settlement Amount.** Defendant promises to pay $2,500,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any employer payroll taxes) prior to the deadline set forth below. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

2. **Payments from the Gross Settlement Amount.** The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

   a. **To Plaintiffs:** Plaintiffs will each apply to the Court for an award of no more than $10,000 as the Class Representative Service Payments (totaling $20,000) in addition to the Individual Class Payments to be paid to Plaintiffs. The Administrator will pay the Class Representative Service Payments approved by the Court out of the Gross Settlement Amount. If the Court approves Class Representative Service Payments of less than the amounts requested, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. To receive the payment, Plaintiffs will agree to a 1542 waiver and a general release of all claims as set forth below. The Class Representative Service Payments are in settlement of claims for interest and for penalties allegedly due, shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. Plaintiffs will be solely responsible for any tax payments associated with the Class Representative Service Payments.

   b. **To Class Counsel:** Class Counsel will apply to the Court for an award of no more than $833,333.33 (1/3 of the Gross Settlement Amount) as their Class Counsel Fees Payment and an amount no more than $35,000 for all costs and expenses incurred as their Class Counsel Litigation Expenses Payment. The Administrator will pay the amounts approved by the Court out of the Gross

Settlement Amount. The Administrator may also purchase an annuity to utilize U.S. treasuries and bonds or other attorney fee deferral vehicles for Class Counsel. If the Court approves a Class Counsel Fees Payment or a Class Counsel Litigation Expenses Payment of less than these amounts, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Payroll tax withholding and deductions, if any, will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and one or more IRS Form 1099 will be issued to Class Counsel with respect to those payments.

c. **To the Administrator.** The Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses that are documented and approved by the Court in an amount not to exceed $15,000 ("Settlement Administration Expenses"). To the extent the Settlement Administration Expenses that are documented and approved by the Court are less than the amount requested, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members.

d. **To the LWDA and Aggrieved Employees.** The Parties will seek approval from the Court for the PAGA Payment of $150,000, seventy-five percent (75%) of which ($112,500) shall be paid to the LWDA as the its share of the settlement of civil penalties paid under this Agreement pursuant to PAGA, and taken out of the Gross Settlement Amount, and twenty-five percent (25%) of which ($37,500) will be distributed to the Aggrieved Employees as their Individual PAGA Payments based on their pay periods worked during the PAGA Period. The portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be reported on IRS Form 1099. Each Aggrieved Employee will be bound by the PAGA portion of the release contemplated in this agreement and will receive their respective Individual PAGA Payment regardless of whether they exclude themselves from the class action settlement. If the Court approves a PAGA Payment of less than the amount requested, the remainder will be retained in the Net Settlement Amount for distribution to Participating Class Members. Class Counsel shall notify the LWDA of this Settlement.

3. **Payments From the Net Settlement Amount.** The Net Settlement Amount shall include the following payments after the deductions have been made from the Gross Settlement Amount:

a. **Individual Class Payment and Individual PAGA Payment.** Subject to the terms and conditions of this Agreement, the Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. Class Members are not required to submit a claim form to receive an Individual Class Payment. The Administrator will calculate Participating Class Members' Individual Class Payments and Aggrieved Employees' Individual PAGA Payments based on the following:

i. The Net Settlement Amount will be distributed to each Participating Class Member based on their proportionate number of workweeks worked during the Class Period by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all Participating Class Members during the Class Period, provided that every Participating Class Member will be credited with at least one (1) workweek.

ii. The portion of the PAGA Payment allocated to Aggrieved Employees will be distributed to the Aggrieved Employees based on their pay periods worked during the PAGA Period regardless of whether they exclude themselves from the class action settlement. The Individual PAGA Payments will be calculated based on the Aggrieved Employee's proportionate number of pay periods they worked during the PAGA Period by multiplying the portion of the PAGA Payment allocated to Aggrieved Employees ($37,500) by a fraction, the numerator of which is the Aggrieved Employee's total pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all Aggrieved Employees during the PAGA Period, provided that every Aggrieved Employee will be credited with at least one (1) pay period.

iii. Defendant's payroll records shall be controlling. However, Participating Class Members will have the right to challenge the number of workweeks and pay periods identified for them.

b. **Tax Withholding**.

i. Subject to approval by the Court, twenty percent (20%) of each Participating Class Member's Individual Class Payment is in settlement of wage claims ("Wage Portion"). The Wage Portion is subject to wage withholdings and shall be reported on IRS Form W-2.

ii. Subject to approval by the Court, eighty percent (80%) of each Participating Class Member's Individual Class Payment is in settlement of claims for interest and penalties ("Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings and shall be reported on IRS Form 1099.

c. **Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Individual Class Payment. However, if a Non-Participating Class Member is an Aggrieved Employee, they shall still receive their Individual PAGA Payment, and their Requests for Exclusion will reduce neither the Gross Settlement Amount nor the Net Settlement Amount. Non-Participating Class Members' Individual Class Payments (net of any applicable Individual PAGA Payment) will remain a part of the Net Settlement Amount for distribution to Participating Class Members on a *pro rata* basis relative to their Individual Class Payments.

4. **Appointment of Administrator.** The Administrator's duties will include, among others: (1) preparing, translating, printing, and mailing the Class Notice to all Class Members; (2) maintaining a static website to keep Class Members updated on this Action; (3) conducting a National Change of Address Database ("NCOA") search to update Class Member addresses before mailing the Class Notices; (4) remailing Class Notices that are returned to the Class Member's new address; (5) setting up a toll-free telephone number to receive calls from Class Members; (6) receiving and reviewing for validity completed Requests for Exclusion; (7) providing the Parties with weekly status reports about the delivery of Class Notices and receipt of completed Requests for Exclusion; (8) calculating Individual Class Payments; (9) issuing the checks to effectuate the payments due under the Settlement; (10) issuing the tax reports required under this Agreement; and (11) administering the Settlement. The Administrator will establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

5. **Procedure for Approving Settlement**.

a. **Motion for Preliminary Approval of Settlement by the Court**.

i. After execution of this Settlement Agreement, Plaintiffs will prepare and file a Motion for Preliminary Approval with the Court for an order giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice. Plaintiffs shall provide a draft of the Motion for Preliminary Approval to Defendant for their review at least ten (10) calendar days before the filing deadline. Defendant must provide their comments concerning the Motion for Preliminary Approval within seven (7) calendar days of receipt.

ii. At the hearing on the Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the motion, and submit an Order Granting Preliminary Approval of the Settlement.

iii. If the Court declines to preliminarily approve material aspects of the Settlement, the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval.

b. **Notice to Class Members.** After the Court enters an Order Granting Preliminary Approval of the Settlement, every Class Member will be sent the Class Notice as follows:

i. No later than thirty (30) calendar days after the Court grants preliminary approval, Defendant will deliver the Class Data to the Administrator. The Administrator shall not provide the Class Data to Class Counsel absent express authorization from Defendant. If any or all the Class Data is unavailable to Defendant, then Defendant will inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon the Class Data prior to when it must be submitted to the Administrator. This information will otherwise remain confidential and will not be disclosed to anyone except as required to applicable taxing authorities to carry out the reasonable efforts described herein or pursuant to Defendant's express written authorization or by order of the Court. All Class Data will be used for settlement notification and settlement administration and shall not be used for any other purpose.

ii. Prior to mailing the Class Notices, the Administrator shall update the Class Data using the NCOA. Using best efforts to mail it as soon as possible and no later than fourteen (14) calendar days after receiving the Class Data, the Administrator will mail the Class Notices to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant.

iii. If a Class Notice is returned because of an incorrect address, the Administrator will promptly, and no later than fourteen (14) calendar days from receipt of the returned Class Notice, search for a more current address for the Class Member and remail the Class Notice to the Class Member. The Administrator will use the Class Data to find a more current address. The Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice is returned as undeliverable. These reasonable steps shall include, at a minimum: (1) the tracking of all undelivered mail; (2) performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, Social Security Numbers, and credit reports; and (3) promptly remailing to Class Members for whom new addresses are found. If the Class Notice is remailed, the Administrator will note for its own records and notify the Parties' counsel of the date and address of each such remailing as part of a weekly status report provided to the Parties. Those Class Members who receive a remailed Class Notices, whether by skip trace or forwarded mail, will have their deadline to postmark an exclusion request, objection, and dispute extended by fourteen (14) calendar days.

iv. As part of its weekly status report, the Administrator will inform the Parties’ counsel of the number of Requests for Exclusion (including the numbers of valid and deficient) and objections it receives.

v. No later than sixteen (16) court days before the Final Approval Hearing, the Administrator will provide the Parties for filing with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement and detailing the Requests for Exclusion (including the numbers of valid and deficient Requests for Exclusion) and objections it received. Prior to the Final Approval Hearing, the Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

c. **Objections to Settlement; Disputes as to Workweeks Allocated; Disputes as to Pay Periods Allocated; and Requests for Exclusion.** Participating Class Members may submit objections to the Settlement and/or objections to the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments. Class Members may also submit disputes as to workweeks and/or pay periods allocated to them and Requests for Exclusion pursuant to the following procedures:

i. **Objections to Settlement.** The Class Notice will explain to the Class Members that only Participating Class Members who wish to object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments may object to the Settlement, either in writing or orally at the Final Approval Hearing. Objections in writing must be submitted to the Administrator and postmarked no later than the Response Deadline. Written objections must set forth the grounds for the objection(s) and comply with the instructions in the Class Notice. The Administrator shall promptly provide the Parties’ counsel with a copy of written objections received.

Class Members shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) to orally object to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payments even if they have not submitted written objections to the Administrator.

A Participating Class Member who does not submit an objection in the manner and by the deadline specified above and in the Class Notice will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or Class Representative Service Payments.

Non-Participating Class Members shall have no ability to comment on or object to the Settlement.

ii. **Disputes as to Workweeks and Pay Periods.** Each Class Member and Aggrieved Employee shall have up to the Response Deadline to dispute the number of workweeks and pay periods allocated to them during the Class Period and PAGA Period respectively. Any notice of dispute shall be directed to the Administrator. Any dispute as to this allocation shall be resolved by the Administrator, with input and assistance from Defense Counsel where applicable.

iii. **Requests for Exclusion.** The Class Notice also will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Administrator postmarked no later than the Response Deadline a signed letter setting forth their name with a simple statement that they request exclusion from the class and do not wish to participate in the settlement. To be valid, a Request for Exclusion must be timely and comply with the instructions in the Class Notice. If a question is raised about the authenticity of a signed Request for Exclusion, the Administrator will have the right to demand additional proof of the Class Member's identity.

Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in this Agreement and are eligible for an Individual PAGA Payment.

A Non-Participating Class Member will otherwise not participate in or be bound by the Settlement and the Judgment. Defendant will remain free to contest any claim brought by any Class Member that would have been barred by this Agreement, and nothing in this Agreement will constitute or be construed as a waiver of any defense Defendant has or could assert against such a claim. A Class Member who does not complete and mail a timely Request for Exclusion in the manner and by the deadline specified above and in the Class Notice will automatically become a Participating Class Member, will receive an Individual Class Payment without the need to file a claim form, and will be bound by all terms and conditions of the Settlement, including the Released Class Claims, if the Settlement is approved by the Court, and by the Judgment, regardless of whether he or she has objected to the Settlement. Persons who submit a Request for Exclusion shall not be permitted to file objections to the Settlement or appear at the Final Approval Hearing to voice any objections to the Settlement except as to the right of any Aggrieved Employee, to the extent required by law, to object to the terms of the PAGA portion of this Settlement.

d. **No Solicitation.** The Parties and their counsel represent they have not nor will solicit or encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. If a Class Member submits a Request for Exclusion, Class Counsel will not solicit, represent, or encourage Non-Participating Class Member to participate in separate litigation against Defendant.

e. **Motion for Final Approval**.

i. Unless otherwise ordered by the Court, Class Counsel will file with the Court their motion for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payments no later than the date Plaintiffs file the Motion for Final Approval, and the application will be scheduled to be heard by the Court at the Final Approval Hearing. Plaintiffs shall provide a draft of the Motion for Final Approval to Defendant for their review at least ten (10) calendar days before the filing deadline. Defendant must provide their comments concerning the Motion for Final Approval within seven (7) calendar days of receipt.

ii. If any opposition is filed to the Motion for Final Approval, then no later than five (5) court days before the Final Approval Hearing, both Parties may file a reply in support of the Motion for Final Approval.

iii. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement, then the Parties shall work together in good faith to address any concerns raised by the Court and propose a revised Settlement for the Court's approval. However, an award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, or Class Counsel Litigation Expenses Payment will not constitute a material modification to the Settlement.

iv. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of: (1) enforcing this Agreement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

f. **Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs and Participating Class Members who did not timely submit an objection to the Settlement, Defendant, and Defense Counsel waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to vacate judgment, a motion for new trial, and any extraordinary writ. The Judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement (including payments under the Settlement) will be suspended until such time as the appeal is finally resolved and the Judgment becomes Final.

g. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, 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 the Parties shall work together in good faith to address any concerns raised by the reviewing Court and propose a revised Settlement for the approval of the Court no later than fourteen (14) calendar days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Service Payments, Class Counsel Fees Payment, or Class Counsel Litigation Expenses Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this Section as long as Defendant's obligation to make payments under this Settlement will remain limited by the Gross Settlement Amount.

h. **Funding of the Settlement and Disbursement of Settlement Payments.** Defendant shall fund the Gross Settlement Amount (and separately fund employer's share of payroll taxes) by depositing the money with the Administrator by the Effective Date. Within fourteen (14) calendar days after the funding of the Settlement, the Administrator will make all settlement payments, payroll tax payments, and remittance to relevant taxing authorities in accordance with this Agreement.

i. **Uncashed Individual Class Payment Checks.** A Participating Class Member must cash his or her Individual Class Payment check within one hundred eighty (180) calendar days after it is mailed to him or her. If a check is returned to the Administrator, the Administrator will make all reasonable efforts to remail it to the affected Participating Class Member at his or her correct address by use of available email addresses, phone numbers, Social Security Numbers, and credit reports. If a Participating Class Member's

Individual Class Payment check is not cashed within one hundred twenty (120) calendar days after its last mailing to the Participating Class Member, the Administrator will also send the affected Participating Class Member a notice informing him or her that unless the check is cashed in the next sixty (60) calendar days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the 60-day period after this notice, the funds from such uncashed checks will be paid to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member.

j. **Final Report by Administrator to Court.** Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Administrator will provide the Parties with a declaration providing a final report on the disbursements of all funds from the Gross Settlement Amount.

6. **Release of Claims**.

a. **Participating Class Members.** Upon final approval, Participating Class Members will waive and release Defendant and the Released Parties from the Released Class Claims (as defined above in section I(29)).

b. **Aggrieved Employees.** Upon final approval and in exchange for payment of the PAGA Payment, Plaintiffs, State of California, and all Aggrieved Employees will waive and release the Released Parties from the Released PAGA Claims (as defined above in section I(30)).

c. **Plaintiffs**. Plaintiffs and their representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Defendant and the Released Parties from any and all claims, known and unknown, asserted and unasserted, that they have or may have had against Defendant or any Released Parties. Such claims include, but are not limited to: (i) breach of contract, whether written, oral or implied; (ii) violation of public policy; (iii) tort claims, including but not limited to intentional infliction of emotional distress, negligent infliction of emotional distress, defamation, misrepresentation, and fraud; (iv) retaliation claims; common-law claims; (v) any other claims for damages, costs, fees, or other expenses, including attorney's fees; and (vi) any violation of the following statutes, laws, and regulations: Title VII of the Civil Rights Act of 1964, as amended; Civil Rights Act of 1991; sections 1981 through 1988 of Title 42 of the United States Code, as amended; Americans with Disabilities Act of 1990, as amended; Age Discrimination in Employment Act of 1967, as amended; Older Workers Benefit Protection Act; Employment Retirement Income Security Act of 1974, as amended; Occupational Safety and Health Act, as amended; Sarbanes-Oxley Act of 2002; Family and Medical leave Act of 1993, as amended; Fair Labor Standards Act; Fair Employment and Housing Act; Government Code section 12900 *et seq*.; Family Rights Act; California Government Code section 12945.2

et seq.; Unruh Civil Rights Act; Civil Code section 51 *et seq*.; Whistleblower Protection Law; Labor Code section 1102.5(a) to (c); Labor Code section 6300 *et seq*.; and any applicable regulations thereunder; Labor Code; Private Attorneys General Act of 2004 (Labor Code section 2698 *et seq*.); Labor Code section 132(a); and any other federal, state, or local civil employment law, statute, regulation, or ordinance capable of being released by Plaintiffs, excluding any claims that cannot be released as a matter of law, such as Plaintiffs' pending workers' compensation claims.

i. **Plaintiffs' Waiver of Rights Under California Civil Code Section 1542.** For purposes of this release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code, which reads:

> **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 released party.**

7. **No Effect on Other Benefits.** The Individual Class Payments will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement. Plaintiffs and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

8. **Confidentiality Prior to Preliminary Approval.** Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree, until the Motion for Preliminary Approval is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (a) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (b) to counsel in a related matter; (c) to the extent necessary to report income to appropriate taxing authorities; (d) in response to a court order or subpoena; or (e) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to notify the other of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel, Defendant, and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with a third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This section does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

9. **Miscellaneous Terms**.

a. **No Admission of Liability or Class Certification for Other Purposes**. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted. Moreover, nothing in this Agreement should be intended or construed as an admission by Plaintiffs that Defendant's defenses in the Action have merit. The Parties agree class certification and representative treatment is for purposes of this Agreement only. If, for any reason, the Court does not grant Preliminary Approval or Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, Defendant reserves all available defenses to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any grounds available and to contest Defendant's defenses. This Agreement and the Parties' willingness to settle will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate this Agreement).

b. **Confidentiality**. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

c. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibit will constitute the entire agreement between the Parties relating to the Settlement. It will then be deemed no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or its exhibit other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibit.

d. **Attorney Authorization.** The Parties counsel warrant and represent they are authorized by the Parties to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement, including any amendments to this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the 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 mediator.

e. **No Prior Assignments.** The Parties 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 and portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

f. **No Tax Advice.** Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

g. **Modification of Agreement**. Any and all parts of the Agreement may be amended, modified, changed, or waived only by an express written instrument signed by all Parties and approved by the Court.

h. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

i. **Applicable Law.** All terms and conditions of this Agreement and its exhibit will be governed by and interpreted according to the laws of the State of California.

j. **Cooperation.** 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.

k. **Fair Settlement.** The Parties and their counsel believe and warrant this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

l. **Use and Return of Documents and Data.** All originals, copies, and summaries of documents and data provided to Class Counsel by Defendant in connection with the mediation or other settlement negotiations in this matter may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule.

m. **Headings.** The descriptive heading of any section or Section of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

n. **Notice.** All notices, demands, or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by U.S. mail, addressed as follows:

To Plaintiffs and Class:

JUSTICE LAW CORPORATION
DOUGLAS HAN
SHUNT TATAVOS-GHARAJEH
HALINA SZYMANSKI
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259
Email: dhan@justicelawcorp.com
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WILSHIRE LAW FIRM
JOHN G. YSLAS
DIEGO AVILES
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3055 Wilshire Blvd., 12th Floor
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Facsimile: (213) 381-9989
Email: jyslas@wilshirelawfirm.com
daviles@wilshirelawfirm.com
herganyan@wilshirelawfirm.com
mnazaretyan@wilshirelawfirm.com

To Defendant:

HIRSCHFELD KRAEMER LLP
HIEU T. WILLIAMS
ANNA T. PHAM
456 Montgomery Street, Suite 2200
San Francisco, California 94104
Telephone: (415) 835-9000
Facsimile: (415) 834-0443
Email: APham@hkemploymentlaw.com
HWilliams@hkemploymentlaw.com

o. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically, or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

p. **Stay of Litigation.** The Parties agree upon execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process from the date of mediation until the earlier of the Effective Date or the reopening of renewed discovery.

q. **Continuing Jurisdiction.** The Parties hereby stipulate that the Court may, upon proper motion and good cause showing, enter judgment on the terms set forth herein. The Settlement shall be admissible to the Court, and not subject to the Confidentiality provision contained herein, in the event of an enforcement action. The Court shall retain continuing jurisdiction over the Action under CCP section 664.6 to ensure the continuing implementation of this Agreement and enforcement of the Settlement until performance in full of the terms of this Settlement.

r. **Defendant's Right to Withdraw.** If the number of valid Requests for Exclusion identified by the Administrator is ten percent (10%) or more of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. The Parties agree if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever and that neither Party will have any further obligation to perform under this Settlement provided Defendant will remain responsible for paying all settlement administration costs incurred to that point. Defendant must notify Class Counsel and the Court of its selection to withdraw no later than seven (7) calendar days after the Administrator sends the final weekly status report. A late election will have no effect.

s. **Escalator Clause.** Based on its records, Defendant estimates, as of the date of this Settlement Agreement, there are: (a) 408 Class Members who worked a total of 40,000 workweeks within the Class Period; and (b) 218 Aggrieved Employees who worked a total of 7,738 pay periods within the PAGA Period. If it is determined that the number of workweeks through the Class Period exceeds ten percent (10%) or more of 40,000 (*i.e.*, more than 44,000 workweeks), then at Defendant's option, either the: (a) Gross Settlement Amount shall increase proportionally over the ten percent (10%) increase (*i.e.*, if the number of workweeks increases by 11%, the Gross Settlement Amount will increase by 1%); or (b) Class Period shall end as of the date the workweeks within the Class Period reach 44,000 workweeks.

II. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 04/23/2024 **Cristal Lombera**

By: Cristal Lombera Garcia

Dated: 4/24/2024 **Jesus Cabrera**

By: DocuSigned by: E4B88148D16C4F1...

Dated: April 23, 2024 **Justice Law Corporation [Approving as to Form Only]**

By: ______________________
Douglas Han, Esq.
Shunt Tatavos-Gharajeh, Esq.
Halina Hszymanski, Esq.
Attorneys for Plaintiff Cristal Lombera

Dated: April 24, 2024 **Wilshire Law Firm [Approving as to Form Only]**

By: ______________________
John G. Yslas, Esq.
Diego Aviles, Esq.
Harry Erganyan, Esq.
Mariam Nazaretyan, Esq.
Attorneys for Plaintiff Jesus Cabrera

4/25/2024

Dated: ____________________ **Creekside Auto Group dba Capitol Toyota**

DocuSigned by:

Kevin Fox

By: ____

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On behalf of Creekside Auto Group dba Capitol Toyota

Kevin Fox

President

4/25/2024

Dated: ____________________ **Hirschfeld Kraemer LLP [Approving as to Form Only]**

DocuSigned by:

By: ____

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Hieu T. Williams, Esq.
Anna T. Pham, Esq.
Attorneys for Defendant