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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN – BAKERSFIELD DISTRICT

DAVID B. MURBACH, an individual, on behalf of himself and on behalf of all persons similarly situated, Plaintiff, vs. BAKERSFIELD AUTO GROUP, LLC, a California Limited Liability Company, and DOES 1 through 50, inclusive, Defendants.	Case No.: BCV-24-100168 [*Unlimited Jurisdiction*] *Assigned for all purposes to the Honorable T. Mark Smith, Dept. T-2* **DECLARATION OF ATTORNEY MATT BLUM IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT** Hearing Date: July 2, 2025 Hearing Time: 8:30 a.m.

1. My name is Matt Blum. I am an attorney licensed to practice law in the state of California. My state bar license number is 285944. I have made the following statements based on my own personal knowledge and will testify to the truthfulness of these statements if called upon to do so.
2. I have been counsel of record for the Plaintiff and the represented class since the inception of this action.
3. On January 15, 2024, Plaintiff filed his initial complaint in this action which was inclusive of only individual claims. On January 22, 2024, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") of his intent to assert a claim under the Private Attorney General Act of 2004 ("PAGA") and his alleged bases for the claims. More than 65 days passed after the notice letter was sent to the LWDA, and the LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter. On March 24, 2024, Plaintiff filed a first amended complaint in this action inclusive of his claims under the Private Attorney Generals Act ("PAGA"). After receiving Plaintiff' FAC, Defendant moved to compel arbitration of the individual claims due to a binding arbitration agreement. The Parties submitted a joint stipulation to this court to stay the PAGA claims while the individual ones were being litigated.
4. After several meet and confer efforts, the parties agreed to stay the individual arbitration, and instead move forward with attempting to negotiate a good faith global settlement. In preparation for the negotiation, the parties exchanged informal discovery in good faith. This information was incorporated into Plaintiff's damage calculation during the course of the negotiation.
5. Based upon information provided to me by Defendant as part of the exchange of informal discovery in advance of and in support of settlement discussions, as of the date of the parties' final negotiations, there were approximately 126 aggrieved employees who worked a total of approximately 3,605 pay periods during the PAGA Period. Defendant provided us with all relevant employment policies, sample employee schedules and break waivers, and other relevant documentation, as well as Plaintiff's complete personnel file. The parties agreed to split costs for purposes of hiring a mediator if necessary.

6. Following the informal exchange of discovery, the Parties entered into a good faith negotiation. As negotiations progressed, it became clear that we could likely resolve the case without having to expend costs on a mediator. In good faith, counsel for the parties proceeded to negotiate the settlement that is being presented to the court today. The Parties thereafter negotiated and entered into a long form settlement agreement. Accordingly, the Parties now ask the Court to formally approve the Parties' Settlement.
7. The Settlement Agreement negotiated by the parties provides for Defendant to pay ninety thousand one hundred and twenty-five dollars ($90,125.00). as the "Gross Settlement Amount". (Settlement Agreement at §4.01) This Gross Settlement Amount includes the following: (i) any payment to the LWDA; (ii) any payment to Aggrieved Employees; (iii) the payment of fees and costs to Plaintiff's counsel, as approved by the Court; and (v) all fees, costs, and expenses of administration of this Agreement. (*Id.*) The "PAGA Payment" is defined as the amount remaining from the Gross Settlement Amount after the deduction of the Settlement Administration Fee, Plaintiffs' Counsel's Fee Amount and Plaintiffs' Counsels' Cost Amount. *See the* Settlement Agreement attached herein.

8. The Net PAGA Payment shall represent Labor Code Section 2699 penalties, of which 75% of the payment will be paid to the LWDA as the LWDA Payment and 25% will be paid to Aggrieved Employees as Individual PAGA Payments, unless the Court determines otherwise. A reallocation of the settlement funds amongst PAGA claims directed by the Court shall not be a basis for either side to void the Settlement Agreement. Aggrieved Employees will be issued a Form 1099 for their share of the PAGA payments. The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of bimonthly payroll periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period
9. The "Aggrieved Employees" are defined as "all of Defendant's current and former non-exempt employees employed in California between January 22, 2023, through November 25, 2024. Defendant provided Plaintiff's Counsel with the number of pay periods.

Defendant represented that there are approximately 3,605 pay periods as of the Parties' settlement date. After confirming the number of pay periods in the PAGA period if the Court grants approval of the settlement, Defendant will provide a supplemental declaration confirming the number of pay periods and Aggrieved Employees.

10. Pursuant to the terms of the settlement agreement, notice shall be provided to the Aggrieved Employees in the following manner: No later than thirty (30) days after Effective Date[1] Defendant shall provide the Settlement Administrator with a list of Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee, the last known home address for each such Aggrieved Employee, each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods employed by Defendant in California during the PAGA Period.

11. The individual PAGA Payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 reflecting this portion of the settlement. Settlement

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[1] "Effective Date" means the date upon which the following have occurred: (a) approval of the Settlement is granted by the Superior Court of California for the County of San Diego, or other court assuming jurisdiction of this matter, (b) the Court's Judgment approving the Settlement becomes Final, and (c) the date of the time for filing or noticing any appeal of the Judgment has expired. If there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court shall be the date the Settlement is Final. If there is an intervener, but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment shall be the date the Settlement is Final. If there is no intervener in the Action, the date the Court enters an order approving this Settlement shall be the date the Settlement is Final. For purposes of this Agreement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Agreement may be timely filed and none is filed (*i.e.*, 60 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in a any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Agreement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Agreement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Agreement is affirmed.

checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all uncashed checks shall be voided, and the funds represented thereby shall be paid to the State Controller Fund in the name of the Aggrieved Employee.

12. The PAGA settlement releases the "Released Claims" which are any and all claims for civil penalties under PAGA, of whatever kind or nature, whether known or unknown, arising during the PAGA Period, based on the facts alleged in the operative complaint, as well as Plaintiffs' notice letters to the LWDA, and any resulting claim for attorneys' fees and costs under PAGA, which occurred during the PAGA Period. The release excludes individual claims and claims outside of the PAGA Period.

13. Pursuant to California Labor Code Section 2699(1), Plaintiff will provide a copy of the Settlement Agreement to the LWDA concurrently with the filing of the instant motion for settlement approval as well as a declaration confirming that Plaintiff has submitted the Settlement Agreement to the LWDA in compliance with Labor Code Section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.

14. The amounts to be paid from the Gross PAGA Settlement Amount other than the Net PAGA Payment, subject to Court approval, are as follows: (1) Thirty thousand and eleven dollars ($30,011.00) shall be paid to Plaintiff's Counsel for payment of attorneys' fees[2], ten thousand six hundred and seventy dollars ($1,545.00) shall be paid to Plaintiff's Counsel for litigation expenses incurred in prosecuting the PAGA, and settlement administration fees shall be distributed to the third party settlement administrator ILYM Group, Inc. in an amount not to exceed $10,000.00. If any of these amounts end up being less than estimated, the remaining amounts will be added to the PAGA Fund.

[2] This amount reflects 33% of the Gross PAGA payment

15. The Gross Settlement Amount of $90,000.00 is fair and reasonable and, therefore, should be approved. Here, *without stacking* the PAGA penalties, Defendant's *maximum* exposure without stacking PAGA penalties is estimated at approximately $360,500 in PAGA penalties. This equals 3,605 pay periods multiplied by a $100 penalty per pay period.

16. The primary claims in this PAGA action are based on (1) Defendant's alleged failure to provide compliant meal and rest breaks to the Aggrieved Employees when a break was missed, short or late; (2) Failure to pay minimum wage and overtime; and (3) Failure to issue properly itemized wage statements; and (4) Failed to calculate overtime at the proper regular rate of pay.

17. Here, a number of defenses asserted by Defendant presented serious threats to the claims of the Plaintiff and the Aggrieved Employees. Defendant asserted that the employment practices complied with all applicable Labor Laws. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Superior Court,* 53 Cal. 4th 1004 (2012), weakened, if not eliminated, Plaintiffs' claims, on liability, value, and manageability as to the meal period and rest break claims. A major component of the damages alleged to have been suffered by the Aggrieved Employees are attributed to missed meal breaks and rest breaks. During negotiations, Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely meal periods and rest breaks, and that employees like the Plaintiff *chose* not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved Employees to take meal periods according to schedules compliant with the California Labor Code, and included an outline of employees' rights with respect to breaks based on the length of their shift. Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly enforced lawful

policies, and thus afforded Plaintiff and the Aggrieved Employees the opportunity to take compliant meal breaks. Because Plaintiff's claims were largely based on the missed meal breaks, and because Defendant's policies were, indeed, compliant, this presented a very real concern for Plaintiff and the Aggrieved Employees. If successful, this defense could eliminate or substantially reduce any recovery. While Plaintiff believes that this defense, and others, could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery.

18. Plaintiff further alleged that Defendant miscalculated the regular rate of pay for purposes of overtime, meal premiums, and redeemed sick pay because Defendant failed to include non-discretionary incentive compensation when calculating the regular rate of pay for purposes of overtime, meal premiums, and redeemed sick pay. The regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. Alvarado v. Dart Container Corp. of California (2018) 4 Cal.5th 542, 552-554. For overtime work, "an employee must receive a 50 percent premium on top of his or her regular rate of pay[.]" Id. at 553. California law also requires meal period premiums and rest period premiums to be paid at an employee's regular rate of pay. See Ferra v. Lowes Hollywood Hotel, LLC (2021) 11 Cal.5th 858.) Further, California Labor Code section 246(1)(1) expressly mandates that sick pay for non-exempt employees be based on either "the regular rate of pay for the workweek in which the employee uses paid sick time" or the regular rate of pay in the 90 days preceding the use of the sick leave.

19. Conversely, Defendant denied liability and asserted it paid the correct rate of pay for purposes of overtime wages and sick pay. Defendant also argued that these bonuses were discretionary and did not need to be included in the regular rate calculation for payment of overtime wages and sick pay.

20. Plaintiff also alleged derivative wage statement violations based on Defendant's failure to provide meal and rest periods. Plaintiff's Counsel considered the arguable presence of various penalties and weighed the potential recoveries against probable defenses.

Specifically, Defendant could also argue that that meal and rest period violations do not entitle employees like Plaintiff and the Aggrieved Employees to pursue the derivative itemized wage statement penalties. (Naranjo v. Spectrum Security Services, Inc. (2023) 88 Cal.App.5th 927). Plaintiff could not give the penalty claims great weight given that they depended on proving the underlying claims, which had their own risks.

21. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties, reduction, and manageability. Defendant could argue that no penalties prior to the PAGA notification and/or a Court finding of liability should be awarded because the violations were not intentional, and at least some Courts have so ruled. In addition, Defendant argued that any Court would substantially reduce the PAGA penalty awards in light of decisions like *Carrington*.

22. These defenses present a significant risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. Given Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement Sum is fair and reasonable. This is particularly true given the changes that Defendant has now made to its policies as described above.

23. I have significant experience litigating wage and hour claims including claims for PAGA penalties, and the Gross Settlement Amount here is similar to or greater than similar settlements that courts have approved. Through the course of my thirteen-year career as an attorney I have negotiated hundreds of wage and hour related settlements and acted as lead counsel in bringing multiple PAGA and wage hour class action cases through final approval. A few of these previously approved PAGA cases include: Macias et al. v. ABM Electrical and Lighting Solutions, Inc., 37-2020-00033639 (Central Division San Diego); Trinidad et al. v. Ascot Hotel, L.P., 21-SMCV00575 (Santa Monica Courthouse – LA County); Riedl v. Owl Inc., 21-CIV-02704 (San Mateo).

24. The LWDA has been provided notice of this motion and the PAGA settlement via an electronic submission on their PAGA website.

25. With respect to the Court's approval of the requested attorney's fees in this case, my firm's diligent and efficient litigation of this action resulted in the creation of an ascertainable common fund of $90,125.00 that will substantially benefit the state of California and the aggrieved employees. During the course of the representation, I drafted all LWDA notice letters, the complaint, the first amended complaint, demand letters, correspondence with opposing counsel, as well as this approval motion. I also spent time meeting with my client, reviewing and conducting legal research with respect to his claims, reviewing his employment records, and reviewing evidence produced by the Defendant inclusive of corporate policies, time records and sample employment data. I was also responsible for conducting all negotiations with opposing counsel.

26. During the course of this litigation my firm incurred $1,545.00 in legal costs inclusive of a complex civil case filing fee, LWDA notice fees, service of process fees, and miscellaneous electronic filing fees associated with this action.

DATED: June 4, 2025 **THE LAW OFFICE OF MATT BLUM**

By:____________________________
Matthew M. Blum
Attorney for Plaintiff

EXHIBIT 1

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Attorneys for Defendant Bakersfield Auto Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN – BAKERSFIELD DISTRICT

DAVID B. MURBACH, an individual, and on behalf of himself and on behalf of all persons similarly situated, Plaintiff, vs. BAKERSFIELD AUTO GROUP, LLC, a California Limited Liability Company, and DOES 1 through 50, inclusive, Defendants.	Case No.: BCV-24-100168 [*Unlimited Jurisdiction*] *Assigned for all purposes to the Honorable T. Mark Smith, Dept. T-2* **PAGA SETTLEMENT AGREEMENT** Complaint filed: January 17, 2024 First Amended Complaint filed: March 25, 2024 Trial date: Not set

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PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between Plaintiff David B. Murbach ("Plaintiff" or "Employee") and Defendant Bakersfield Auto Group, LLC ("Defendant" or "Employer"). The Agreement refers to Plaintiff and Defendant collectively as "Parties," or individually as "Party."

1. DEFINITIONS

1.1. "**Action**" means the Plaintiff's lawsuit alleging wage and hour violations against Defendant, captioned *David B. Murbach v. Bakersfield Auto Group, LLC,* Case No.: BCV-24-100168 initiated on January 17, 2024 and pending in Superior Court of the State of California, County of Kern.

1.2. "**Administrator**" means APEX CLASS ACTION the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. "**Administration Expenses Payment**" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with Preliminary Approval of the Settlement.

1.4. "**Aggrieved Employee**" means all non-exempt employees in California employed by Defendant at any time during the PAGA Period.

1.5. "**Aggrieved Employee Data**" means Aggrieved Employee identifying information in Defendant's possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.

1.6. "**Aggrieved Employee Address Search**" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. "**Court**" means the Superior Court of California, County of Kern.

1.8. "**Defendant**" means the named Defendant in the Action, Bakersfield Auto Group, LLC

1.9. "**Defense Counsel**" means Fisher & Phillips LLP.

1.10. "**Effective Date**" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order approving the PAGA Settlement; and (b) the Judgment is final. The Judgment is final as of the day the Court enters Judgment.

1.11. "**Gross Settlement Amount**" means $90,125.00, which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses.

1.12. "**Individual PAGA Payment**" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.13. "**Judgment**" means the judgment entered by the Court based upon the Order granting Approval of the Settlement.

1.14. "**LWDA**" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code § 2699(i).

1.15. "**LWDA PAGA Payment**" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code § 2699(i).

1.16. "**Net Settlement Amount**" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.17. "**PAGA Counsel**" or "**Plaintiff's Counsel**" means The Law Office of Matt Blum and JCL Law Firm, APC, the attorneys representing Plaintiff in the Action.

1.18. "**PAGA Counsel Fees Payment**" and "**PAGA Counsel Litigation Expenses Payment**" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.19. "**PAGA Pay Period**" means any Pay Period during which an Aggrieved Employee worked for Defendant as a non-exempt, hourly-paid employee in California during the PAGA Period. PAGA Pay Periods may be based on either: (1) pay periods during at least one shift was worked; or (2) hire dates and, where applicable, last dates worked or separation dates, re-hire dates, dates of any periods of leave, and dates of any transition between non-exempt and exempt status.

1.20. "**PAGA Period**" means the period from January 22, 2023, through November 25, 2024.

1.21. "**PAGA**" means the Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*).

1.22. "**PAGA Notice**" means Plaintiff's PAGA letter to Defendant and the LWDA providing notice pursuant to Labor Code § 2699.3(a).

1.23. "**PAGA Penalties**" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.24. "**Plaintiff**" means David B. Murbach, the named plaintiff in the Action.

1.25. "**Approval Order**" means the proposed Court Order Granting Approval of PAGA Settlement.

1.26. "**Released PAGA Claims**" means the claims being released as described in Paragraph 5 below.

1.27. "**Released Parties**" means Bakersfield Auto Group, LLC and each of its former, present, and future owners, parents, subsidiaries, and affiliates, and all of its current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives.

1.28. "**Settlement**" means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

2.1. On January 17, 2024, Plaintiff commenced this Action by filing a class action Complaint alleging causes of action against Defendant for unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to provide accurate itemized wage statements, failure to reimburse employees for required expenses, failure to provide wages when due. On March 25, 2024, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for civil penalties under PAGA. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint, and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.

2.3. In November 2024, the Parties, after several months of arms-length negotiations between PAGA Counsel and Defense Counsel, reached an agreement to settle the Action, which led to this Agreement.

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

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, Defendant promises to pay $90,125.00 and no more as the Gross Settlement Amount. Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. 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:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 33 1/3 % which is currently estimated to be $30,041.00 and a PAGA Counsel Litigation

Expenses Payment of not more than $3,500.00. Defendant will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. <u>To the Administrator:</u> An Administrator Expenses Payment not to exceed $10,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than $10,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.3. <u>To the LWDA and Aggrieved Employees:</u> PAGA Penalties in the amount of $46,584.00 to be paid from the Gross Settlement Amount, with 75% ($34,938.00) allocated to the LWDA PAGA Payment and 25% ($11,646.00) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($11,646.00), by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendant estimates there are 126 Aggrieved Employees who worked a total of 3,605 PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within fourteen (14) calendar days of approval of the Settlement, Defendant will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Court approval.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fee Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fee Payment and the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than one hundred and eighty (180) calendar days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are retuned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. <u>RELEASES OF CLAIMS</u>

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1. <u>Plaintiff's Release.</u>

5.1.1. <u>Scope of Plaintiff's Release</u>. Plaintiff and his respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.2. <u>Plaintiff's Waiver of Rights Under California Civil Code § 1542</u>. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of Section 1542 of the California 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.

5.2. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT

The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2), including (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval of the PAGA Settlement and/or stipulation as applicable, (ii) a draft proposed Order Granting Approval of PAGA Settlement; (iii) a draft proposed notice of Settlement, (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (v) a signed declaration from PAGA Counsel's firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code § 2699.3(a)), Operative Complaint (Labor Code § 2699(l)(1)), this Agreement (Labor Code § 2699(l)(2)); and (vi) facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declaration, PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval and/or joint stipulation as applicable of this Settlement no later than seventy-five (75) calendar days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Order granting approval to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION

7.1. Selection of Administrator. The Parties have jointly selected APEX CLASS ACTION to serve as the Administrator and verified that, as a condition of appointment, APEX CLASS ACTION agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have, and use, its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation § 468B-1.

7.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES [and ESCALATOR CLAUSE]

Based on its records, Defendant represents that there are 126 Aggrieved Employees who worked approximately 3,605 weekly Pay Periods during the PAGA Period (between the start of the PAGA Period on January 22, 2023, through November 25, 2024).

8.1. Increase in Pay Periods. In the event the number of Pay Periods in the PAGA Period worked by Aggrieved Employees (3,605 pay periods) during the foregoing period increases by more than 10%, or 361 Pay Periods, then Defendant shall increase the Gross Settlement Amount proportionally by the Pay Periods in excess of 361 Pay Periods (for example, if the increase is 11% then the settlement amount will increase by 1%).

9. CONTINUING JURISDICTION AND WAIVER OF RIGHT TO APPEAL

9.1. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.2. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings; the right to file motions to vacate judgment; motions for new trial; extraordinary writs; and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until the time the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS

10.1. No Admission of Liability or Representative Manageability 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, nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason, the Court does not approve this Settlement, Defendant reserves all available defenses to the claims in the Action and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement, and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement, together with its attached exhibit(s), shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

10.3. Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, 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 reasonably required to effectuate the terms of this Agreement, including any amendments to this Agreement.

10.4. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5. No Prior Assignments. The Parties separately represent 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 by the Party in this Settlement.

10.6. No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendant, nor Defense Counsel are providing any 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.

10.7. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

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

10.9. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

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

10.12. Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel, pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendant or Defense Counsel in connection with the mediation, other settlement negotiations, or the Settlement, 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 of court. Not later than ninety (90) calendar days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of the Aggrieved Employee Data received from Defendant unless, prior to the Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA Counsel for the return, rather than the destruction, of the Aggrieved Employee Data.

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

10.14. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15. Notice. All notices, demands, or other communications between the Parties, in connection with this Agreement, will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by e-mail or messenger, addressed as follows:

To Plaintiff:

Matt Blum, Esq. (SBN 285944)
THE LAW OFFICE OF MATT BLUM
550 West C Street, Suite 960
San Diego, CA 92101
Tel: (860) 271-6273
Fax: (619) 238-1351
mblumlaw@gmail.com

Jean-Claude Lapuyade (SBN 248676)
JCL LAW FIRM, APC
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
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Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com
Attorneys for Plaintiff

To Defendant:

Spencer Waldron (SBN 284029)
Lauren Roseman (SBN 316800)
Zachary Princi (SBN 352172)
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2050 Main Street | Suite 1000
Irvine, CA 92614
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E-mail: swaldron@fisherphillips.com
E-mail: lroseman@fisherphillips.com
E-mail: zprinci@fisherphillips.com
Attorneys for Defendant

10.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e., DocuSign), or e-mail which, for purposes of this Agreement, shall be accepted as an original. All and each executed counterpart(s) will be deemed to be one and the same instrument if counsel for the Parties exchange between themselves signed counterparts. Any executed counterpart(s) will be admissible in evidence to prove the existence and contents of this Agreement.

10.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement, the litigation shall be stayed except to effectuate the terms of this Agreement. The Parties further agree that upon signing of this Agreement, pursuant to Code of Civil Procedure § 583.330, the Parties will extend the date to bring a case to trial under Code of Civil Procedure § 583.310 for the entire period of this settlement process.

[Signature page follows]

Plaintiff:

Dated: 1/14/2025

By: DocuSigned by: DO Murbach E097918E3AC443D
Plaintiff David B. Murbach

Plaintiff's Counsel:

Dated: 1-16-2025

THE LAW OFFICE OF MATT BLUM

By: ______________________
Matt Blum
Attorneys for Plaintiff

Dated: 1-16-2025

JCL LAW FIRM, APC

By: ______________________
Jean-Claude Lapuyade
Attorneys for Plaintiff

Defendant:

Defendant Bakersfield Auto Group, LLC

Dated:

By: PATRICK BECK
Print Name

____
Signature

DEALER PRINCIPAL
Title

Defendant's Counsel:

FISHER & PHILLIPS LLP

Dated:

By: Lauren Roseman
Spencer Waldron
Lauren Roseman
Zachary Princi

Attorneys for Defendant