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7 Attorneys for Defendants
FAIRVIEW FORD SALES, INC. and FAIRWAY
FORD SALES, INC.
8

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN BERNARDINO

11 JAIME CORONA, individually and on
behalf of all others similarly situated and
12 all allegedly aggrieved employees,

13 Plaintiff,

14 v.

15 FAIRVIEW FORD SALES, INC., a
California Corporation; and FAIRWAY
16 FORD SALES, INC.,

17 Defendants.
18

Case No. CIVSB2124446

**CLASS AND REPRESENTATIVE ACTION
SETTLEMENT AGREEMENT**

19
20 This Class and Representative Action Settlement Agreement is entered into between
21 Defendants FAIRVIEW FORD SALES, INC. and FAIRWAY FORD SALES, INC. (“Defendants”)
22 on the one hand, and Plaintiff JAIME CORONA (“Named Plaintiff”), as an individual and on behalf
23 of the Settlement Class and Aggrieved Employees (as defined below) on the other hand (Defendants
24 and Named Plaintiff are collectively the “Parties”), in the above-referenced lawsuit.
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1 **DEFINITIONS**

2 1. Action. The “Action” means the instant class action and PAGA complaint filed
3 in San Bernardino Superior Court, Case No. CIVSB2124446.

4 2. Aggrieved Employees. “Aggrieved Employees” means all salespersons,
5 finance managers, and service writers who are employed or have been employed by Defendants in the
6 State of California as non-exempt employees during the PAGA Period.

7 3. Agreement or Settlement Agreement. “Agreement” or “Settlement
8 Agreement” shall refer to the instant Class and Representative Action Settlement Agreement.

9 4. Class Counsel. “Class Counsel” shall mean CounselOne, PC.

10 5. Class Members, the Class and Settlement Class Members. “Class Members”
11 or “the Class” means all salespersons, finance managers, and service writers who are employed or
12 have been employed by Defendants in the State of California as non-exempt employees during the
13 Class Period. The “Settlement Class” or “Settlement Class Members” means all Class Members other
14 than those who opt out (see paragraphs 21 and 55.d).

15 6. Class Notice. “Class Notice” means the document mutually agreed upon by the
16 Parties and approved by the Court to be sent to the Class and Aggrieved Employees following
17 preliminary approval that includes the scope of release language for Settled Claims and Settled PAGA
18 Claims, notifies Class Members and Aggrieved Employees of the settlement, explains the settlement
19 and Class Members’ options, including how Class Members may opt out or object to the settlement,
20 and explains the facts and methods based on which each Class Member’s and Aggrieved Employees’
21 estimated settlement payments are calculated.

22 7. Class Period. “Class Period” means August 18, 2016 through June 30, 2021.

23 8. The Court. The “Court” refers to the San Bernardino Superior Court.

24 9. Day. “Day” or “days” refers to a calendar day(s) unless otherwise stated. If
25 any designated date or deadline falls on a weekend or holiday, the designated date or deadline will
26 occur on the next business day.

27 10. Defendants. “Defendants” means FAIRVIEW FORD SALES, INC. and
28 FAIRWAY FORD SALES, INC.

1 11. Effective Date. “Effective Date” of this Agreement means the date of the entry
2 of the judgment granting final approval of the settlement, unless objections are filed which are not
3 subsequently withdrawn prior to a ruling on final approval, in which case the effective date is five (5)
4 court days after the expiration of the appeals or other collateral attacks period, or in the event appeals
5 are filed, the Effective Date is the date five (5) court days after the appeals and/or collateral attacks
6 are dismissed or otherwise resolved in a manner that upholds the settlement in its entirety. In the event
7 an appeal, writ, motion challenging the judgment or other collateral attack is made, the funds shall not
8 be distributed until the challenge or other collateral attack is resolved in a manner that upholds the
9 settlement in its entirety.

10 12. Exclusion Period. The “Exclusion Period” means the time period commencing
11 on the date the Class Notice is mailed to Class Members and ending forty-five (45) days later on the
12 deadline to submit an Opt Out Request or Objection.

13 13. Final Judgment. “Final Judgment” means the judgment entered and filed by
14 the Court that: (1) finally approves this Agreement and the settlement and disposes all class issues
15 raised in this Action arising during the Class Period, bars Settlement Class Members from reasserting
16 Settled Claims arising during the Class Period against Released Parties; (2) finally approves this
17 Agreement and the settlement and disposes all PAGA issues and claims raised in this Action during
18 the PAGA Period, bars Aggrieved Employees from reasserting PAGA Claims arising during the
19 PAGA Period against Released Parties and permanently enjoins all Aggrieved Employees from
20 pursuing, or seeking to reopen, any of the PAGA Claims arising during the PAGA Period; and
21 (3) awards and orders the payment of all required amounts pursuant to the terms of this Agreement
22 (approved Class Counsel’s attorneys’ fees and costs, Settlement Payments to Class Members and
23 PAGA Payments to Aggrieved Employees, *etc.*).

24 14. Final Settlement Approval Hearing. “Final Settlement Approval Hearing”
25 means the hearing at which the Court shall consider the motion for final approval of this settlement
26 and determine whether to fully and finally approve the fairness and reasonableness of this settlement
27 and Agreement, and enter an order barring Settlement Class Members from asserting Settled Claims
28 arising during the Class Period against Released Parties and all Aggrieved Employees from pursuing

1 Settled PAGA Claims arising during the PAGA Period against Released Parties and permanently
2 enjoining all Settlement Class Members and all Aggrieved Employees from seeking to reopen, any of
3 the Settled Claims and Settled PAGA Claims during the applicable period.

4 15. Funding Payment. “Funding Payment” mean the payment(s) remitted to the
5 Settlement Administrator (“SA”) by Defendants following Final Judgment and the Effective Date in
6 full and complete discharge of the entire monetary obligation of Defendants in an amount equal to the
7 GSA plus Defendants’ share of payroll taxes, which, as set forth herein, shall satisfy all outstanding
8 and awarded Settlement Payments, PAGA Payments, attorneys’ fees and costs awarded to Class
9 Counsel, the Named Plaintiff’s enhancement award as awarded by the Court, outstanding payments to
10 the SA as approved by the Court for settlement administration costs, and the payment to the Labor and
11 Workforce Development Agency (or “LWDA”).

12 16. Gross Settlement Amount or GSA. “Gross Settlement Amount” or “GSA”
13 means a maximum total payment of Two Hundred Forty Thousand Dollars and Zero Cents
14 (\$240,000.00), payable by Defendants under this Agreement. Defendants shall not be obligated to
15 pay more than the GSA under this Agreement under any circumstances, with the exception of their
16 share of payroll taxes and as provided in Paragraph 85 below. All Parties shall pay their own fees and
17 costs unless expressly listed herein.

18 17. Last Known Address. “Last Known Address” means the most recently
19 recorded mailing address for a Class Member/Aggrieved Employee contained in Defendants’ payroll
20 records.

21 18. Named Plaintiff. “Named Plaintiff” means Plaintiff JAIME CORONA.

22 19. Net Settlement Amount or NSA. “Net Settlement Amount” or “NSA” means
23 the Gross Settlement Amount less the amounts deducted pursuant to paragraphs 48 a through e of this
24 Agreement, including deductions of the amounts awarded to Class Counsel, the enhancement award
25 to the Named Plaintiff, the amount allocated to the PAGA, and the costs awarded for settlement
26 administration pursuant to this Agreement.

1 20. Objection. “Objection” means a written request a Settlement Class Member
2 may submit no later than the last day of the Exclusion Period and in the form specified in paragraph
3 56 in order to object to the settlement.

4 21. Opt Out Request. “Opt Out Request” means the written request (see paragraph
5 55.d) submitted by a Class Member no later than the last day of the Exclusion Period to request
6 exclusion from the Settlement Class.

7 22. Order of Final Approval or Order Granting Final Approval of Settlement.
8 “Order of Final Approval” or “Order Granting Final Approval of Settlement” means a proposed order
9 issued in conjunction with the entry of the Final Judgment to be submitted by the Named Plaintiff
10 together with the Motion for Final Approval of the settlement for entry and filing by the Court as
11 specified in this Settlement Agreement.

12 23. PAGA Period. “PAGA Period” shall mean August 18, 2019 through
13 June 30, 2021.

14 24. PAGA Workweek Rate and PAGA Payment. “PAGA Workweek Rate” is the
15 \$5,000 (*i.e.*, the remainder after subtracting the \$15,000 allocated to the LWDA from the \$20,000 total
16 amount of this settlement allocated to PAGA) divided by the total number of PAGA Workweeks
17 Worked credited to all Aggrieved Employees. Each Aggrieved Employee’s PAGA Payment is equal
18 to the PAGA Workweek Rate multiplied by his or her individual PAGA Workweeks Worked.
19 Therefore, the amount of each Aggrieved Employee’s PAGA Payment is tied to the number of PAGA
20 Workweeks Worked that each Aggrieved Employee worked for Defendants in the State of California
21 during the PAGA Period in comparison to all PAGA Workweeks Worked by all Aggrieved Employees
22 working for Defendants in the State of California during the PAGA Period.

23 25. PAGA Workweeks Worked. “PAGA Workweeks Worked” is defined as the
24 number of workweeks worked by Aggrieved Employees from their start date(s) to their end date(s) of
25 employment for Defendants in California as a non-exempt salesperson, finance manager, and/or
26 service writer during the PAGA Period, as determined by Defendants’ records. As Class Members
27 were paid semi-monthly, “PAGA Workweeks Worked” has been and will be calculated/estimated by
28 the Parties as two times the number of pay periods worked on Defendants’ payroll records during the

1 relevant time periods. To the extent Defendants' payroll records have any temporal gaps, Workweeks
2 Worked for such time periods will be calculated by totaling all days between a Settlement Class
3 Member's start date(s) and end date(s) of employment for Defendant in California as a non-exempt
4 salesperson, finance manager, and/or service writer during the Class Period, as reasonably determined
5 by Defendants' records and as only subject to revision pursuant to the challenge provisions set forth
6 in paragraph 55.c, and dividing this total by 7.

7 26. Parties. "Parties" shall mean Named Plaintiff, individually and on behalf of all
8 Class Members and Aggrieved Employees, and Defendants.

9 27. Preliminary Approval Order. "Preliminary Approval Order" is the Order
10 entered and filed by the Court that preliminarily approves the terms and conditions of this Agreement,
11 including approval of the Parties' Agreement that specifies the content of notice and manner in which
12 notice will be provided to the Class and Aggrieved Employees.

13 28. Released Parties. "Released Parties" means Defendants and their affiliated
14 companies, successor(s) in interest, predecessor(s) in interest, parents, members, subsidiaries, related
15 companies and business concerns, past and present, and each of them, as well as each of their insurers,
16 partners, trustees, directors, shareholders, officers, agents, attorneys, servants and employees, past and
17 present, and each of them and all working with or in concert with them or connected with them.

18 29. Settlement Administrator or SA. "Settlement Administrator" or "SA" shall
19 mean CPT Group, Inc. or such other neutral administrator as chosen by the Parties and approved by
20 the Court (see paragraph 53a).

21 30. Settled Claims. "Settled Claims" means any and all claims for relief, arising
22 during the Class Period, which Named Plaintiff or any Settlement Class Members have had, now have
23 against the Released Parties or any of them for any or all claims alleged in the operative Complaint
24 (see Paragraph 38) or which could have been alleged in the operative Complaint based on the
25 allegations, facts, matters, transactions or occurrences alleged therein, including without limiting the
26 generality thereof the claims listed in the operative Complaint. The operative Complaint includes
27 causes of action for: (1) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid
28 Minimum Wages); (2) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (3)

1 Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (4)
2 Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (5) Violation of
3 California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (6) Violation of
4 California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor
5 Code §§ 201 and 202 (Final Wages Not Timely Paid); (8) Violation of California Labor Code § 204
6 (Wages Not Timely Paid During Employment); (9) Violation of California Labor Code § 1174(d)
7 (Failure To Keep Requisite Payroll Records); and (10) Violation of California Business & Professions
8 Code § 17200, *et seq.* The release of the foregoing claims, extends to all theories of relief regardless
9 of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits
10 or based on other theories of relief (including, without limitation, as violations of the California Labor
11 Code, the California Wage Orders, applicable regulations, California’s Business and Professions Code
12 section 17200). “Settled Claims” includes all types of relief available for the above-referenced claims,
13 including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens,
14 attorneys’ fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated
15 damages.

16 31. Settled PAGA Claims. “Settled PAGA Claims” means any and all claims for
17 relief, arising during the PAGA Period, which Named Plaintiff or any Aggrieved Employees have had,
18 now have against the Released Parties or any of them for any or all claims alleged in the Complaint or
19 which could have been alleged in the Complaint based on the allegations, facts, matters, transactions
20 or occurrences alleged therein under California's Private Attorney General Act or PAGA, California
21 Labor Code § 2699, *et seq.*, including without limiting the generality thereof the claims listed in the
22 Action, subject to court approval. The release of the foregoing claims extends to all theories of relief
23 regardless of whether the claim is, was, or could have been alleged as separate claims, causes of action,
24 lawsuits or based on other theories of relief, whether under California law, federal law, state law or
25 common law (including, without limitation, as violations of the California Labor Code, the California
26 Wage Orders and applicable regulations). “Settled PAGA Claims” includes all types of relief available
27 for the above-referenced claims under the PAGA. The Final Judgment shall expressly provide that it
28

1 covers and bars each and every Aggrieved Employee from asserting any Settled PAGA Claims arising
2 during the PAGA Period in the future.

3 32. Settlement Class/Settlement Class Member(s). “Settlement Class Member”
4 means all Class Members other than those who have timely and validly submitted Opt Out Requests
5 and thereby excluded themselves from the Settlement Class.

6 33. Settlement Payment. “Settlement Payment” means a payment pursuant to a
7 Settlement Class Member’s pro rata allocation of the NSA as specified in paragraph 48.

8 34. Settlement Proceeds Distribution Deadline. “Settlement Proceeds Distribution
9 Deadline” means a date that is twenty (20) days after the Effective Date.

10 35. Updated Address. “Updated Address” means a mailing address that was
11 updated by a reasonable address verification measure of the SA or by an updated mailing address
12 provided by the United States Postal Service or a Class Member.

13 36. Workweek Rate. “Workweek Rate” shall mean the amount yielded from
14 dividing the Net Settlement Amount by the total of all Workweeks Worked credited to all Settlement
15 Class Members. Each Settlement Class Member’s Settlement Payment is equal to the Workweek Rate
16 multiplied by his or her individual Workweeks Worked for Defendants as a non-exempt salesperson,
17 finance manager, and/or service writer during the Class Period. Therefore, the amount of each
18 Settlement Class Member’s Settlement Payment is tied to the number of Workweeks Worked that each
19 Settlement Class Member worked for Defendants in the State of California during the Class Period in
20 comparison to all Workweeks Worked by all Class Members in the State of California during the Class
21 Period.

22 37. Workweeks Worked. “Workweeks Worked” is defined as workweeks during
23 the Class Period in which a Class Member performed work for Defendants as a non-exempt
24 salesperson, finance manager, and/or service writer based on Defendants’ payroll records. As Class
25 Members were paid semi-monthly, “Workweeks Worked” has been and will be calculated/estimated
26 by the Parties as two times the number of pay periods worked on Defendants’ payroll records during
27 the relevant time periods. To the extent Defendants’ payroll records have any temporal gaps,
28 Workweeks Worked for such time periods will be calculated by totaling all days between a Settlement

1 Class Member's start date(s) and end date(s) of employment for Defendant in California as a non-
2 exempt salesperson, finance manager, and/or service writer during the Class Period, as reasonably
3 determined by Defendants' records and as only subject to revision pursuant to the challenge provisions
4 set forth in paragraph 55.c, and dividing this total by 7.

5 **RECITALS**

6 38. On or about August 18, 2020, Plaintiff filed a letter with the LWDA against
7 Defendants, alleging various Labor Code violations in advance of pursuing a PAGA action. On
8 August 24, 2021, this Action, San Bernardino Superior Court Case No. CIVSB2124446, was filed
9 against Defendants. Under the Complaint filed in the Action, Plaintiff states causes of action for: (1)
10 Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California
11 Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor
12 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197,
13 and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final
14 Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid
15 During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage
16 Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll
17 Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business
18 Expenses); (10) Violation of California Business & Professions Code § 17200, *et seq*; and
19 (11) Representative Claim for Penalties Pursuant to PAGA, California Labor Code § 2699, *et seq*.

20 39. Defendants have denied and continue to deny that they engaged in any
21 misconduct in connection with their wage-and-hour practices and that they has any liability or engaged
22 in wrongdoing of any kind associated with the claims alleged in the Action, including any Settled
23 Claims and Settled PAGA Claims. Defendants further contend that they have complied at all times
24 with both federal and state wage-and-hour laws, and all other laws regulating the employer-employee
25 relationship that relate to the employment of Named Plaintiff and the Class and Aggrieved Employees.

26 40. Defendants and Class Counsel, on behalf of the Named Plaintiff and the Class
27 and Aggrieved Employees, attended a full-day mediation with Jill Sperber, Esquire and agreed to settle
28 the Action. The Parties subsequently embodied the agreement in a short-form Memorandum of

1 Understanding (“MOU”). The Parties hereto agree that the terms and conditions of this Agreement
2 are the result of lengthy, intensive arms-length negotiations between the Parties supervised by an
3 experienced employment law mediator. The Parties agree that the Agreement is entered into in good
4 faith as to each Class Member and Aggrieved Employee and that the settlement is fair, reasonable and
5 adequate as to each Class Member and Aggrieved Employee.

6 41. Class Counsel is of the opinion that this settlement is fair, reasonable, and
7 adequate, and in the best interest of the Class and Aggrieved Employee in light of all known facts and
8 circumstances, including the benefits conferred by the settlement, the risk of significant delay, the
9 uncertainty and risk of the outcome of further litigation, the burdens of proof necessary to establish
10 liability, defenses asserted to the merits, the risks of proceeding on any class claims and PAGA claims,
11 including class certification, the difficulties in establishing damages and penalties, and the numerous
12 potential appellate issues. While Defendants specifically deny any liability or wrongdoing in the
13 Action, Defendants have agreed to enter into this Settlement Agreement to avoid the cost and business
14 disruption associated with defending the Action. Defendants have claimed and continue to claim that
15 the Settled Claims and Settled PAGA Claims have no merit and do not give rise to liability. This
16 Agreement is a compromise of disputed claims. This Agreement, made and entered into by and
17 between the Named Plaintiff (on behalf of himself and on behalf of the Class Members and Aggrieved
18 Employees) and Defendants, each with the assistance of their respective counsel or attorneys of record,
19 is intended to fully, finally, and forever settle, compromise and discharge the Settled Claims and
20 Settled PAGA Claims against the Released Parties, subject to the terms and conditions set forth herein.
21 This Agreement supersedes all prior agreements of the Parties concerning settlement of the Action,
22 including the MOU.

23 42. Because this Action is pled as a class action, this settlement must receive
24 preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a
25 conditional basis.

26 43. This Agreement is a settlement document and shall not be disclosed in any
27 manner unless and until it is filed as a public record document with the Court, and neither its
28 acceptance by the Parties nor its filing with the Court shall, in themselves, render this Agreement

1 admissible in evidence in any other proceeding, subject to the limited exception that it shall be
2 admissible in an action or proceeding to approve, interpret or enforce this Agreement.

3 **TERMS AND CONDITIONS OF SETTLEMENT**

4 NOW THEREFORE, in consideration of the recitals listed above and the promises and
5 warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of
6 the consideration and undertakings set forth herein, the Named Plaintiff, individually and on behalf of
7 the Class Members and Aggrieved Employees, on the one hand, and Defendants, on the other hand,
8 agree that the Action shall be, and is finally and fully compromised and settled on the following terms
9 and conditions.

10 44. Non-Admission of Liability. The Parties enter into this Agreement to resolve
11 the dispute that has arisen between them and to avoid the burden, expense and risk of continued
12 litigation. In entering into this Agreement, Defendants do not admit, and specifically deny, that they
13 have: violated any federal, state, or local law; violated any regulations or guidelines promulgated
14 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any
15 contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in
16 any other unlawful conduct with respect to their employees or any other person or entity. Neither this
17 Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or
18 proceedings, payouts or other events associated with it, shall be construed as an admission or
19 concession by Defendants of any such violation(s) or failure(s) to comply with any applicable law by
20 Defendants or any Released Parties. Except as necessary in a proceeding to approve, interpret or
21 enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered
22 or received as evidence in any action or proceeding to establish any liability or admission on the part
23 of Defendants or to establish the existence of any condition constituting a violation of, or
24 noncompliance with, federal, state, local or other applicable law. In addition, as set forth in paragraph
25 65, the Parties intend this settlement to be contingent upon the preliminary and final approval of this
26 Agreement; and in the event final approval of this Agreement is not obtained the Parties do not waive,
27 and instead expressly reserve, their respective rights to prosecute and defend this Action as if this
28 Agreement never existed in the event the settlement is not fully and finally approved as set forth herein.

1 In the event that this Agreement is not approved by the Court, fails to become effective, or is reversed,
2 withdrawn or modified by the Court or any other court with jurisdiction over the Action, the
3 Agreement shall become null and void *ab initio* and shall have no bearing on, and shall not be
4 admissible in connection with, further proceedings in this Action, except that the Court may award
5 less than the amounts listed in paragraph 48 a through e without impacting the validity and
6 enforceability of this Agreement.

7 45. Stipulation for Class Certification. The Parties stipulate to the certification of
8 this Settlement Class for purposes of this settlement only. If, however, the settlement does not become
9 final for any reason, the Parties' Agreement shall become null and void *ab initio* and shall have no
10 bearing on, and shall not be admissible in connection with, whether class certification would be
11 appropriate in any other context in this Action.

12 46. Release of Settled Claims. As of the Effective Date, Named Plaintiff and all
13 Settlement Class Members hereby do and shall be deemed to have fully, finally, and forever released,
14 settled, compromised, relinquished and discharged any and all of the Released Parties of and from any
15 and all Settled Claims. The settlement includes a release of all Settled Claims during the Class Period
16 by Settlement Class Members employed as non-exempt salespersons, finance managers, and/or service
17 writers during the Class Period.

18 a. The Parties agree for settlement purposes only that, because the Class
19 Members are so numerous, it is impossible or impracticable to have each Class Member execute this
20 Agreement. Accordingly, the Class Notice will advise all Class Members of the binding nature of the
21 release and such notice shall have the same force and effect as if the Agreement were executed by
22 each Class Member.

23 b. Named Plaintiff and Class Counsel represent, covenant, and warrant
24 that they have not directly or indirectly assigned, transferred, encumbered or purported to assign,
25 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause
26 of action, or rights herein released and discharged, except as set forth herein.

27 c. The Parties agree that this is a settlement of disputed claims not
28 involving undisputed wages, and that Labor Code Section 206.5 is therefore inapplicable.

1 47. Release of Settled PAGA Claims. As of the Effective Date, Named Plaintiff
2 and all Aggrieved Employees hereby do and shall be deemed to have fully, finally, and forever
3 released, settled, compromised, relinquished and discharged any and all of the Released Parties of and
4 from any and all Settled PAGA Claims. The settlement includes a release of all Settled PAGA Claims
5 during the PAGA Period by Aggrieved Employees employed at any time during the PAGA Period.

6 48. Settlement Payments and Calculation of Claims. Subject to final Court
7 approval and the conditions specified in this Agreement, and in consideration of the mutual covenants
8 and promises set forth herein, Defendants agree to pay Two Hundred Forty Thousand Dollars and
9 Zero Cents (\$240,000.00) (the “GSA”), along with Defendants’ share of payroll taxes as calculated
10 by the SA. The GSA shall fully satisfy Defendants’ obligations for any and all payments, fees and
11 costs identified in the Agreement, including, but not limited to, any payments to be made to the Named
12 Plaintiff, Settlement Class Members, Aggrieved Employees, the LWDA, Class Counsel’s attorneys’
13 fees and costs, and settlement administration costs. In no event shall Defendants be required to pay
14 any amounts above the GSA under this settlement and this Agreement with the exception of the
15 employer’s side of the taxes due and payable as a result of this settlement. The Parties agree, subject
16 to Court approval, that the GSA shall be apportioned as follows:

17 a. Attorneys’ Fees. Class Counsel will apply to the Court for an award of
18 attorneys’ fees of no more than of Eighty-Four Thousand Dollars and Zero Cents (\$84,000.00) (or
19 35% of the GSA). The attorneys’ fees shall come from and be deducted from the GSA and paid out
20 as set forth herein. Defendants will not oppose such application.

21 b. Attorneys’ Costs. Named Plaintiff and Class Counsel shall request
22 approval of payment of up to but not to exceed Twelve Thousand Dollars and Zero Cents (\$12,000.00)
23 in attorneys’ costs, including any litigation costs, which will be deducted from the GSA and paid out
24 as set forth herein. Defendants will not oppose such application. Attorneys’ fees as specified in the
25 preceding paragraph and costs as specified in this paragraph shall cover all claimed and unclaimed
26 attorneys’ fees, attorneys’ costs and other amounts payable or awardable against Defendants for Class
27 Counsel’s work, effort, or involvement in the Action and in carrying out the Agreement and includes
28 any and all work, effort or involvement to carry out the terms of the Agreement and as may be

1 potentially or actually necessary or advisable to defend the Agreement and/or settlement through
2 appeal, or collateral attack or in any other forum or proceeding. These specified Attorneys' Fees and
3 Costs shall be the sole payment for attorneys' fees and costs and, otherwise, the Parties and Class
4 Members and their counsel shall bear their own fees and costs in connection with the Action.

5 c. Administration Fees and Costs. Class Counsel will also apply to the
6 Court for approval of settlement administration costs in an amount of up to Ten Thousand Dollars
7 (\$10,000.00), which will be deducted from the GSA. Defendants will not oppose such application.
8 Class Counsel will specify the amount sought for such costs, up to the foregoing maximum, in Named
9 Plaintiff's motions for preliminary and final approval of the settlement.

10 d. Named Plaintiff's Enhancement. Class Counsel will apply to the Court
11 for approval of an enhancement award in an amount not to exceed Five Thousand Dollars and Zero
12 Cents (\$5,000.00) to be paid to Named Plaintiff, for assuming the risks associated with this litigation.
13 Defendants will not oppose such applications. The enhancement award is included in, and shall be
14 deducted from, the GSA.

15 e. PAGA Allocation and Payments. Pursuant to California Labor Code
16 Section 2698, *et seq.*, the Parties designate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
17 the GSA to resolve the PAGA claims on behalf of all Aggrieved Employees for penalties under the
18 PAGA and payment to the LWDA.

19 i. Defendants shall pay seventy five percent (75%) of that amount,
20 or Fifteen Thousand Dollars and Zero Cents (\$15,000.00), to the LWDA and the remainder to
21 Aggrieved Employees. Defendants shall have the option of voiding this Agreement and settlement in
22 the event the LWDA refuses to accept the above amount in full for all civil penalties to Named Plaintiff
23 and Aggrieved Employees in connection with the civil penalty claims alleged in this Action, or in the
24 event the LWDA or anyone on its behalf otherwise successfully challenges the above allocation or the
25 settlement.

26 ii. The remaining Five Thousand Dollars and Zero Cents
27 (\$5,000.00) shall be paid to Aggrieved Employees by multiplying the PAGA Workweek Rate by each
28 individual Aggrieved Employee's PAGA Workweeks Worked.

1 f. NSA. The NSA will be the amount remaining after deducting the
2 amounts specified in paragraphs 48 a through e above.

3 g. Settlement Payments to Settlement Class Members. Settlement
4 Payments will be calculated as follows:

5 i. The NSA will be divided by the total Workweeks Worked by all
6 Settlement Class Members during the Class Period as reflected in Defendants' records. All Settlement
7 Class Members shall be paid an amount equal to their individual Workweeks Worked during the Class
8 Period, multiplied by the Workweek Rate. Workweeks Worked shall be determined by the SA based
9 on data to be provided by Defendants, as may be modified by the resolution of any challenges.

10 ii. The Parties agree that under no circumstances shall Defendants
11 be obligated to pay any amount under this Agreement to any Class Member other than Settlement
12 Class Members and Aggrieved Employees. In addition, the Parties agree that in no event shall
13 Defendants be obligated to pay more than the GSA with the exception of the employer's side of the
14 taxes due and payable as a result of this settlement.

15 iii. The Parties acknowledge and agree that the formula used to
16 calculate Workweeks Worked, individual Settlement Payments, PAGA Workweeks Worked and
17 PAGA Payments does not imply that all of the elements of damages covered by the release are not
18 being taken into account. The above formulas were devised as practical and logistical tools to simplify
19 the payment process.

20 49. No Credit Toward Benefit Plans. The Settlement Payments made to Settlement
21 Class Members and PAGA Payments made to Aggrieved Employees under this Agreement shall not
22 be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class
23 Members or Aggrieved Employee may be eligible, including, but not limited to: profit-sharing plans,
24 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
25 other benefit plan. Rather, it is the Parties' intention that this Agreement will not affect any rights,
26 contributions, or amounts to which any Settlement Class Members, and Aggrieved Employees may be
27 entitled under any benefit plans.

1 50. Taxation of Settlement Proceeds. All Settlement Payments shall be paid in a
2 net amount after applicable employee state and federal tax withholdings, including payroll taxes, if
3 any, have been deducted.

4 a. The Parties agree that based on the claims and defenses being settled,
5 twenty percent (20%) of the amount distributed to each Settlement Class Member will be considered
6 taxable wages, and will be reported as such to each Settlement Class Member on a W-2 Form. The
7 Parties agree that forty percent (40%) of the amount distributed to each Settlement Class Member will
8 be considered interest, and will be reported as such to each Settlement Class Member on an IRS Form
9 1099. The Parties agree that forty percent (40%) of the amount distributed to each Settlement Class
10 Member will be considered penalties and any other non-wage related amount, if any, and will be
11 reported as such to each Settlement Class Member on an IRS Form 1099. The PAGA Payments to
12 Aggrieved Employees will be designated as one hundred percent (100%) payments for alleged
13 penalties and interest and will be reported to each Aggrieved Employee on an IRS Form 1099.

14 b. The SA shall calculate, withhold from the Settlement Payments, and
15 remit to applicable governmental agencies sufficient amounts, if any, as may be owed by Settlement
16 Class Members for applicable employee taxes. The SA will issue appropriate tax forms, if required,
17 to each such Settlement Class Member consistent with the foregoing breakdown.

18 c. All Parties represent that they have not received, and shall not rely on,
19 advice or representations from other parties or their agents, including Class Members and Aggrieved
20 Employees, regarding the tax treatment of payments under federal, state, or local law. In this regard,
21 Named Plaintiff, Class Counsel, Defendants, and Defendants' Counsel make no representations
22 regarding the taxability of the Settlement Payments and PAGA Payments.

23 d. Class Counsel will be issued an IRS Form 1099 for any fees and costs
24 awarded by the Court pursuant to paragraphs 48 a and b. Except as provided paragraphs 48 a and b,
25 each Party shall bear his, her or its own attorneys' fees, costs, and expenses incurred in the prosecution,
26 defense, or settlement of the Action. Class Counsel agrees that any allocation of fees between or
27 among each of the Class Counsel or among the Class Counsel and any other attorney that may be
28 representing Named Plaintiff or the Class shall be the sole responsibility of Class Counsel. Each Party

1 to this Agreement (for purposes of this section, the “acknowledging party” and each Party to this
2 Agreement other than the acknowledging party, an “other party”) acknowledges and agrees that no
3 provision of this Agreement, and no written or oral communication or disclosure or other
4 representation by Named Plaintiff, Class Counsel, Defendants and/or Released Parties is or was
5 intended to be, nor shall be construed or be relied upon as, tax advice, and Named Plaintiff, Class
6 Members and Aggrieved Employees shall not rely on Class Counsel, Defendants, and/or Released
7 Parties for any tax advice with respect to the settlement of this Action, and shall hold the Parties, Class
8 Counsel and Defendants’ Counsel free and harmless from and against any claims resulting from
9 treatment of such payments as non-taxable, including the treatment of such payments as not subject to
10 withholding or deduction for payroll and employment taxes..

11 e. Named Plaintiff will be issued IRS Form 1099 for any enhancement
12 award approved by the Court pursuant to paragraph 48 d. The enhancement award payable to the
13 Named Plaintiff shall be in addition to the Settlement Payment and PAGA Payment that the Named
14 Plaintiff, as applicable, will receive.

15 51. Circular 230 Disclaimer. The Parties acknowledge and agree that (1) no
16 provision of this Agreement, and no written communication or disclosure between or among the
17 Parties, Class Counsel or Defendants’ Counsel and other advisers, is or was intended to be, nor shall
18 any such communication or disclosure constitute or be construed or be relied upon as, tax advice within
19 the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the
20 acknowledging party (a) has relied exclusively upon his, her, or its own, independent legal and tax
21 counsel for advice (including tax advice) in connection with this Agreement, (b) has not entered into
22 this Agreement based upon the recommendation of any other party or any attorney or advisor to any
23 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
24 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party;
25 and (3) no attorney or adviser to any other party has imposed any limitation that protects the
26 confidentiality of any such attorney’s or adviser’s tax strategies (regardless of whether such limitation
27 is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of
28 any transaction, including any transaction contemplated by this Agreement.

1 52. Provisional Approval of Settlement. Following execution of this Agreement,
2 and after providing Defendants' Counsel with a reasonable opportunity to review as set forth below,
3 Named Plaintiff shall file a motion in the Action requesting that the Court enter the Preliminary
4 Approval Order based on an agreed-upon settlement schedule, subject to Court approval:

5 a. Seeking class certification on the terms set forth in this Agreement
6 solely for purposes of class settlement;

7 b. Preliminarily approving the proposed settlement and this Agreement,
8 including the payments to the Settlement Class Members, Class Counsel, the Named Plaintiff,
9 Aggrieved Employees, the SA, and the LWDA;

10 c. Preliminarily approving the appointment of the Named Plaintiff as
11 representative of the Class for settlement purposes, if not otherwise accomplished by class
12 certification;

13 d. Preliminarily approving the appointment of counsel for Named Plaintiff
14 as Class Counsel;

15 e. Appointing and approving an SA as chosen by the Parties and approved
16 by the Court, to administer the notice, opt-out requests, objections and Settlement Payment and PAGA
17 Payment procedures required by this Agreement;

18 f. Approving the form of the Class Notice mutually agreed by the Parties;

19 g. Scheduling the Final Settlement Approval Hearing for consideration of
20 final approval of this Agreement;

21 h. Requiring that any Class Members who object to the Settlement
22 Agreement submit to the SA and serve on the Parties any objection by the end of the Exclusion Period
23 and that the Parties be given an opportunity to file written responses to any objection(s) with the Court;

24 i. Approving the procedure for Class Members to submit Opt Out
25 Requests, and setting a date after which no Class Members shall be allowed to submit Opt Out
26 Requests; and

27 j. Approving the procedure for Settlement Class Members to object to the
28 settlement.

1 Defendants shall not oppose Class Counsel’s motions for preliminary approval and
2 final approval of the settlement so long as the motions and supporting papers are consistent with the
3 terms of this Agreement. Class Counsel shall provide Defendants with an opportunity of five (5) days
4 to review and provide comments on the motions for preliminary and final approval of the settlement
5 before the motion and supporting papers are filed with the Court. The Parties will meet and confer
6 and agree upon the wording of the settlement packages to be sent to Class Members, as well as the
7 proposed orders for preliminary and final approval before filing. Failure of the Court to grant the
8 Preliminary Approval Order will be grounds for the Parties to terminate the settlement and the terms
9 of the Agreement, except that the Court may award less than the amounts listed in paragraphs 48 a
10 through e without impacting the validity and enforceability of this Agreement.

11 53. Notice Procedure.

12 a. *Settlement Administrator.* The Parties select CPT Group, Inc. as the
13 third-party Settlement Administrator (or “SA”) to distribute the Class Notice and the Settlement
14 Payments and PAGA Payments, handle the tax reporting, field questions with a hotline, and post key
15 documents on a settlement website. CPT Group, Inc. (along with any of its agents) shall represent and
16 warrant that it will: (a) provide reasonable and appropriate administrative, physical and technical
17 safeguards for any personally identifiable information (“PII”), which it receives from Defendants; (b)
18 not disclose the PII to Class Counsel, Named Plaintiff, any party or third parties, including agents or
19 subcontractors, without Defendants’ consent; (c) not disclose or otherwise use the PII other than to
20 carry out its duties as set forth herein; (d) promptly provide Defendants with notice if PII is subject to
21 unauthorized access, use, disclosure, modification, or destruction; and (e) return or destroy the PII
22 upon termination of its services.

23 b. *Class Member Data.* Within ten (10) days after both issuance and
24 service of the Preliminary Approval Order, Defendants shall provide to the SA a list of Class Members
25 and Aggrieved Employees that identifies, for each Class Member/Aggrieved Employee and to the
26 fullest extent available based on Defendants’ records, the Social Security number, last-known address,
27 and the date(s) that Class Members/Aggrieved Employee began to work and ceased to work for
28 Defendants as a non-exempt salesperson, finance manager, and/or service writer. Defendants will use

1 this information to determine qualifying Workweeks Worked and PAGA Workweeks Worked, as
2 confirmed by the SA. Defendants agree to consult with the SA as required to provide the list in a
3 format reasonably acceptable for the duties of the SA. The SA will keep the list confidential, use it
4 only for the purposes described herein, take adequate safeguards to protect confidential or private
5 information and return or certify the destruction of the information upon completion of the settlement
6 administration process.

7 54. *Class Notice.* CPT Group, Inc. will send to each Class Member and Aggrieved
8 Employees by First-Class U.S. Mail the Class Notice, which includes information on how Class
9 Members may opt out of or Object to the settlement and a procedure by which a Class Member may
10 challenge the number of Workweeks Worked identified on his/her Class Notice. Enclosed with all
11 Class Notices shall be a postage-prepaid envelope, pre-printed with the following address:

12 *Fairview Ford Sales, Inc., et al.,* Settlement Administrator
13 c/o CPT Group, Inc.
14 [Address of Settlement Administrator]

15 a. *Settlement Administrator Duties.* Prior to mailing the Class Notice, CPT
16 Group, Inc. will update the addresses for the Class Members and Aggrieved Employees using the
17 National Change of Address database and other available resources deemed suitable by CPT Group,
18 Inc.. To the extent this process yields a different address from the one supplied by Defendants
19 (“Updated Address”), that Updated Address shall replace the address supplied by Defendants (“Last
20 Known Address”) and be treated as the new Last Known Address for purposes of this Agreement and
21 for subsequent mailings in particular. The Settlement Administrator shall be permitted to provide
22 notices and communicate to the Class and Aggrieved Employees in a format and statement to be
23 provided to the Court, which Named Plaintiff will submit in conjunction with the motion for
24 preliminary approval and/or motion for final approval.

25 b. *Notice Procedure.* Within ten (10) days after receipt of the above
26 information from Defendants, CPT Group, Inc. shall send the Class Notice to each Class Member’s
27 and Aggrieved Employee’s Last Known Address or Updated Address (if applicable) via First-Class
28 U.S. mail.

1 c. *Exclusion Period.* Class Members will have forty-five (45) days from
2 the postmark of the initial mailing of the Class Notice by CPT Group, Inc. to submit by First-Class
3 U.S. mail their Opt Out Requests, with proof of date of submission to be the postmark date of the
4 completed Opt Out Request. Class Members will also have forty-five (45) days to object to the
5 settlement by filing a written objection with CPT Group, Inc. that sets forth the basis of the objection
6 pursuant to paragraph 56, which the SA shall file or otherwise submit to the Court and serve on the
7 Parties within ten (10) days after the end of the Exclusion Period. Opt Out Requests do not apply to
8 the Settled PAGA Claims and will not exclude Aggrieved Employees from the release of Settled
9 PAGA Claims.

10 d. *SA Follow-up efforts.*

11 i. CPT Group, Inc. shall re-mail by First-Class U.S. mail the Class
12 Notice returned by the Post Office with a forwarding address, and shall re-mail by First-Class U.S.
13 mail the Class Notice to any Class Member/Aggrieved Employee who personally provides an updated
14 address to the SA.

15 ii. In the event that the first mailing of the Class Notice to any Class
16 Member/Aggrieved Employee is returned without a forwarding address, CPT Group, Inc. will
17 immediately perform skip trace(s) if necessary using social security numbers provided by Defendants
18 and National Change of Address searches, as needed, to verify the accuracy of the addresses provided
19 and will conduct a second round of mailings of the Class Notice by First-Class U.S. mail within an
20 agreed number of days for those forms returned to sender.

21 e. *Documenting Communications* CPT Group, Inc. shall date stamp
22 documents it receives, including Opt Out Requests, Objections and any correspondences and
23 documents from Class Members/Aggrieved Employee.

24 f. *Settlement Administrator Declaration.* At least ten (10) days prior to
25 the filing of the motion for final approval, CPT Group, Inc. shall prepare, subject to Class
26 Counsel's/Aggrieved Employee's and Defendants' input and approval, a declaration setting forth the
27 due diligence and proof of mailing of the Class Notices, the results of CPT Group, Inc.'s mailings,
28

1 including tracing and re-mailing efforts, and the Class Members’/Aggrieved Employee’s responses to
2 those mailing and provide additional information deemed necessary to approve the settlement.

3 g. *SA Written Reports.* Each week during the Exclusion Period, CPT
4 Group, Inc. shall provide the Parties with a report listing the number of Class Members who submitted
5 Opt Out Requests and Objections. Within seven (7) days of the close of the Exclusion Period, CPT
6 Group, Inc. will provide a final report indicating the total number and names of Class Members who
7 submitted Opt Out Requests and the names and other pertinent information of Class Members who
8 submitted Objections.

9 h. *SA Calculations and Funding Requirements.* Within five (5) days after
10 resolving all challenges made by Settlement Class Members, and following the Final Approval Order,
11 CPT Group, Inc. shall provide to the Parties a report summarizing the final calculations and funding
12 requirements. After receiving CPT Group, Inc.’s report, Class Counsel and Defendants’ counsel shall
13 review the same to determine if the calculations are consistent with this Agreement, and shall notify
14 CPT Group, Inc. if either counsel does not believe the calculations are consistent with the Agreement.
15 CPT Group, Inc. will also provide information that is requested and approved by both Parties regarding
16 its duties and other aspects of the settlement and that is necessary to carry out the terms of the
17 Settlement Agreement.

18 55. Requirements for Recovery of Settlement Payments.

19 a. *Class Members.* No claim form is necessary to participate in the
20 settlement. Unless a Class Member submits a valid and timely Opt Out Request (as described in
21 paragraph 55 d), a Class Member who takes no action will be a Settlement Class Member, bound by
22 the Judgment, and will receive a payment from the NSA. All Class Members except for those who
23 timely and validly opt out of the settlement shall be bound by the release of Settled Claims in this
24 Agreement. All Aggrieved Employees shall be bound by the release of Settled PAGA Claims in this
25 Agreement, and shall not be able to opt out of that aspect of the Agreement.

26 b. *Late Submissions.* CPT Group, Inc. shall not accept as valid any Opt
27 Out Request postmarked after the end of the Exclusion Period, absent agreement from both Parties. It
28 shall be presumed that, if an Opt Out Request or Objection is not postmarked on or before the last day

1 of the Exclusion Period, the Class Member did not return the Opt Out Request or Objection in a timely
2 manner.

3 c. *Challenges.* Class Members will have the right to challenge the number
4 of Workweeks Worked allocated to them. The following challenge procedure will be established for
5 the Class Member to dispute information on which his/her payment amount is based: Challenges to
6 the number of Workweeks Worked shall be sent directly to CPT Group, Inc. at the address indicated
7 on the Class Notice. A Class Member challenging the number of Workweeks Worked identified may
8 also submit documentary evidence in order to prove the number of Workweeks Worked during the
9 Class Period. Defendants shall have the right to respond to the challenge by any Settlement Class
10 Member. No challenge to the number of Workweeks Worked will be accepted unless sent by First-
11 Class U.S. mail within forty-five (45) days from the initial mailing of the Class Notice by CPT Group,
12 Inc., with proof of date of submission to be the postmark date. Additional time may be provided to a
13 Class Member only upon a showing of good cause and within an amount of time determined by CPT
14 Group, Inc. that will not delay the distribution of Settlement Payments to other Class Members and in
15 no event beyond the date of filing of the motion for final approval. CPT Group, Inc. will inform Class
16 Counsel and Defendants' Counsel in writing of any timely filed challenges and will determine all such
17 disputes after consulting with the Parties regarding the number of Workweeks Worked. Challenges
18 will be resolved without hearing by CPT Group, Inc., who will make a decision based on Defendants'
19 records and any documents or other information presented by the Class Member making the challenge,
20 Class Counsel or Defendants. Subject to Court approval, the SA's determination is final and binding
21 without a right of appeal. CPT Group, Inc. will inform the Parties of its final dispositions of all such
22 challenges.

23 d. Opt-Out Procedure. Unless a Class Member timely opts out of the
24 settlement described in this Agreement, he/she shall be bound by the terms and conditions of this
25 Agreement, and shall also be bound by the Final Judgment enjoining all Settlement Class Members
26 from pursuing, or seeking to reopen, any of the Settled Claims against the Released Parties. A Class
27 Member will not be entitled to opt out of the settlement established by this Agreement unless he or
28 she submits to the SA a request or notice of opting out via First-Class U.S. mail postmarked on or

1 before the expiration of the Exclusion Period. The request must be in writing and include the Class
2 Member's name, address, date, signature, and a request that he or she "opts out" of the settlement.
3 Opt-out requests do not apply to the Settled PAGA Claims and will not exclude Aggrieved Employees
4 from the release of Settled PAGA Claims.

5 i. Upon receipt of any Opt Out Request within the Exclusion
6 Period, CPT Group, Inc. shall review the request to verify the information contained therein and
7 confirm that the request complies with the requirements of this Agreement.

8 ii. Any Class Member who fails to submit via First-Class U.S. mail
9 a timely, complete and valid Opt Out Request shall be barred from opting out of this Agreement or
10 the settlement. CPT Group, Inc. shall not have the authority to extend the deadline for Class Members
11 to file a request to opt out of the settlement absent agreement by both Parties.

12 iii. Class Members shall be permitted to rescind in writing their
13 request to opt out by submitting a written rescission statement to CPT Group, Inc. no later than the
14 Effective Date.

15 iv. If more than five (5%) of the Class Members timely opt out of
16 the settlement, Defendants shall have the sole and absolute discretion to withdraw from this Agreement
17 within fifteen (15) days after expiration of the Exclusion Period. Defendants shall provide written
18 notice of such withdrawal to Class Counsel. In the event that Defendants elects to so withdraw, the
19 withdrawal shall have the same effect as a termination of this Agreement for failure to satisfy a
20 condition of settlement, and the Agreement shall become null and void and have no further force or
21 effect.

22 56. Objections to Settlement. Any Settlement Class Member may object to the
23 settlement. Neither Aggrieved Employees nor Settlement Class Members may object to the PAGA
24 portion of the settlement. Any such objection must be submitted to CPT Group, Inc. in writing on or
25 before the close of the Exclusion Period. Any such written Objection shall include the Class Member's
26 name, address, and last four digits of his/her Social Security number, and state, in writing, the reason
27 for the objection. The Parties shall be permitted to file responses to the Objection in addition to any
28 motion for final approval documents. At no time shall any of the Parties or their counsel seek to solicit

1 or otherwise encourage Settlement Class Members to file or serve written objections to the settlement
2 or appeal from the Order granting final approval and/or Final Judgment. Class Counsel shall not
3 represent any Settlement Class Members with respect to any such objections.

4 57. Final Fairness Hearing, Final Approval and Final Judgment.

5 a. *Entry of Final Judgment.* At the Final Approval Hearing, Named
6 Plaintiff will request, and Defendants will concur in said request, that the Court enter a Final Judgment.

7 b. *Motion.* Named Plaintiff will draft and file a motion for final approval
8 in conformity with any requirements from the Court and will take other action to request the entry of
9 Final Judgment in accordance with this Agreement. The motion for final approval and corresponding
10 paperwork will be subject to input and approval from Defendants and the proposed judgment finally
11 approving the settlement shall be subject to the input from and approval by Defendants, provided that
12 Defendants shall have five (5) days from receipt to provide such input. Defendants will concur in
13 and/or not object to said request that the Court enter Final Judgment finally approving this Agreement.
14 In conjunction with the motion for final approval, Class Counsel shall file a declaration from CPT
15 Group, Inc. confirming that the Class Notice were mailed to all Class Members as required by this
16 Agreement, as well as any additional information Class Counsel, with the input and approval of
17 Defendants, deems appropriate to provide to the Court.

18 c. *Objections.* Before and/or at the Final Fairness Hearing, Named
19 Plaintiff and Defendants, through their counsel of record, may address any written objections from
20 Settlement Class Members or any concerns from Settlement Class Members who attend the hearing
21 as well as any concerns of the Court.

22 d. *Order.* Named Plaintiff will also draft and submit a proposed Order of
23 Final Approval and Final Judgment in the form that is consistent with this Agreement and subject to
24 prior review, revision and approval by Defendants. The Parties shall take all reasonable efforts to
25 secure entry of the Order of Final Approval and Final Judgment. If the Court rejects the Agreement,
26 fails to enter the Order of Final Approval, or fails to enter the Final Judgment, this Agreement shall
27 be void *ab initio*, and Defendants shall have no obligation to make any payments under the Agreement,
28 except for payments to CPT Group, Inc. for services performed up to that time. The Named Plaintiff

1 will submit a proposed Order of Final Approval subject to the review and approval of Defendants that
2 will contain provisions:

3 i. Wherein the Court enters Final Judgment, finding that this
4 Agreement and settlement is fair, just, equitable, reasonable, adequate and in the best interests of the
5 Class and was reached as a result of intensive, serious, and non-collusive arms-length negotiations and
6 was achieved with the aid of an experienced mediator and in good faith as to each Class Member;

7 ii. Affirming that each side will bear its own costs and fees
8 (including attorneys' fees), except as provided by the Agreement, and that Defendants shall not be
9 required to pay any amounts other than as set forth in the Agreement and the Order of Final Approval,
10 and in no event any amount above the GSA plus Defendants' share of payroll taxes;

11 iii. That confirms the certification of the Class for purposes of
12 settlement;

13 iv. That finds that the settlement administration process as carried
14 out afforded adequate protections to Class Members, provided the best notice practicable, and satisfied
15 the requirements of law and due process;

16 v. That overrules any Objections to the settlement;

17 vi. That approves the settlement of PAGA Claims consistent with
18 the Agreement;

19 vii. That retains Court jurisdiction after entry of judgment to oversee
20 administration and enforcement of the terms of the Agreement and the Court's Order that the
21 Settlement Class Members be barred from pursuing, or seeking to reopen, Settled Claims and
22 Aggrieved Parties be barred from pursuing, or seeking to reopen, Settled PAGA Claims against the
23 Released Parties; and

24 viii. That requires the Parties to carry out the provisions of this
25 Agreement.

26 58. Post Final Approval Requirements and Procedures. Following entry of the
27 Court's Order Granting Final Approval of Settlement and Final Judgment, the Parties will act to assure
28 the timely execution and fulfillment of all its provisions, including, but not limited to, the following:

1 a. Should an appeal be taken from the final approval of the settlement, all
2 Parties will support the Order of Final Approval and Final Judgment on appeal;

3 b. The Parties will assist CPT Group, Inc. as needed or requested in the
4 process of identifying and locating Settlement Class Members entitled to Settlement Payments from
5 the NSA and Aggrieved Employees entitled to PAGA Payments and assuring delivery of such
6 payments;

7 c. Class Counsel will assist CPT Group, Inc. as needed or requested in
8 completing the distribution of any uncashed checks as directed by the Court; and

9 d. Class Counsel will certify to the Court completion of all payments
10 required to be made by this Settlement Agreement.

11 59. Payment of Settlement. Within ten (10) days after the Effective Date,
12 Defendants will deposit the Funding Payment into an account established by the SA. In the event an
13 appeal, writ, motion challenging the judgment, or other collateral attack is made, the funds shall not
14 be distributed until the challenge or other collateral attack is resolved in a manner that upholds the
15 settlement in its entirety. The remittance of the Funding Payment to CPT Group, Inc. shall constitute
16 full and complete discharge of the entire monetary obligation of Defendants under this Agreement.
17 No Released Party shall have any further monetary obligation or liability to Class Counsel, Named
18 Plaintiff, or Settlement Class Members under this Agreement after receipt by the SA of the Funding
19 Payment.

20 a. The Parties agree that the Funding Payment will qualify as a settlement
21 fund pursuant to the requirements of Section 468(B)(g) of the Internal Revenue Code of 1986, as
22 amended, and Section 1.468B-1 *et seq.* of the income tax regulations. Furthermore, the SA is hereby
23 designated as the “Administrator” of the qualified settlement funds for purposes of Section 1.468B-
24 2(k) of the income tax regulations. As such, all employee taxes imposed on the gross income of that
25 settlement fund and any tax-related expenses arising from any income tax returns or other reporting
26 documents that may be required by the Internal Revenue Service or any state or local taxing body will
27 be paid from the Funding Payment by the SA.

28

1 b. The distribution of Settlement Payments/PAGA Payments to Settlement
2 Class Members/Aggrieved Employees shall occur no later than the Settlement Proceeds Distribution
3 Deadline. CPT Group, Inc. shall be deemed to have timely distributed Settlement Payments/PAGA
4 Payments if it places said payments in the mail (First-Class U.S.). When CPT Group, Inc. receives
5 notice from Settlement Class Members/Aggrieved Employees that they have not received such
6 Settlement Payments/PAGA Payments due to changes of address or other circumstances, CPT Group,
7 Inc. shall be deemed to have timely distributed those Settlement Payments/PAGA Payments if (after
8 satisfying itself that the amounts have not been received or negotiated) it re-mails the payments to the
9 updated addresses or provides for delivery by other reasonable methods requested by such Settlement
10 Class Members/Aggrieved Employees, provided that any and all requests for re-mailing shall be
11 actually received and acknowledged by the SA at least two (2) weeks before the 150-day deadline
12 referenced in paragraphs 60 and 60 or will be deemed ineffective, ignored and have no effect and the
13 original mailed amount shall be deemed timely distribution of the Settlement Payment/PAGA
14 Payment. CPT Group, Inc. shall mail all Settlement Payments/PAGA Payments by the Settlement
15 Proceeds Distribution Deadline. No person shall have any claim against CPT Group, Inc., Defendants,
16 Named Plaintiff, Class Counsel, Defendants' counsel, or any other agent designated by Named
17 Plaintiff or Defendants based upon the distribution of Settlement Payments/PAGA Payments made
18 substantially in accordance with this Agreement or further orders of the Court.

19 c. The distribution of attorneys' fees, costs, and the Named Plaintiff's
20 enhancement award shall occur no later than the payment date of the payment under the Settlement
21 Proceeds Distribution Deadline. Under no circumstances shall the foregoing payments be made prior
22 to the distribution of Settlement Payments to Settlement Class Members.

23 d. Upon Defendants' transfer of the Funding Payment to CPT Group, Inc.,
24 Defendants, the Released Parties, and Defendants' counsel shall have no further monetary liability or
25 financial responsibility to Class Counsel or to any vendors or third parties employed by the Named
26 Plaintiff or Class Counsel in connection with the Action.

27 e. Defendants shall not be obligated to make any payments contemplated
28 by this Agreement unless and until the Court enters the Final Approval Order and Final Judgment, and

1 after the Effective Date of the Agreement, and no amounts will be owed or payable until all appeals if
2 taken or other collateral attacks have lapsed or have been favorably resolved in favor of the settlement
3 and no further challenge to the settlement is possible.

4 60. Settlement Class Members/Aggrieved Employees who are sent Settlement
5 Payments/PAGA Payments shall have one hundred fifty (150) days after mailing by CPT Group, Inc.
6 to cash their settlement checks. If such Settlement Class Members/Aggrieved Employees do not cash
7 their checks within that period, those checks will become void and a stop payment will be placed on
8 the uncashed checks. Settlement checks that are not cashed within one hundred and fifty (150) days
9 of mailing will be cancelled, and the funds associated with such cancelled checks will be transmitted
10 to a *cy pres* beneficiary (to be determined) in conformity with the requirements of California Code of
11 Civil Procedure Section 384. In such event, those Settlement Class Members will be deemed to have
12 waived irrevocably any right in or claim to a Settlement Payment/PAGA Payment. Settlement Class
13 Members/Aggrieved Employees who fail to negotiate their check(s) in a timely fashion shall, like all
14 Settlement Class Members/Aggrieved Employees remain subject to the terms of the Agreement and
15 the Final Judgment.

16 61. Binding Effect of Agreement on Settlement Class Members and Aggrieved
17 Employees. Subject to final Court approval, all Settlement Class Members and Aggrieved Employees
18 shall be bound by this Agreement, and Final Judgment shall be entered in the Action barring
19 relitigation of any Settled Claims and Settled PAGA Claims against Defendants and/or the Released
20 Parties. As set forth more fully in paragraph 65, if the Court does not enter an Order of Final Approval
21 and Final Judgment granting final approval of the settlement, which becomes final, the settlement shall
22 become null and void, and its terms and all documents setting out its terms shall be inadmissible in
23 further litigation of this Action or any other case.

24 62. Non-Interference with Opt-Out Procedure. The Parties and their counsel agree
25 that they shall not seek to solicit or otherwise encourage Class Members to submit requests for
26 exclusion (Opt-Out Requests) or objections to the settlement or to appeal from the Final Judgment.
27
28

1 63. Waiver of Appeal. Subject to preliminary and final approval of this settlement,
2 Named Plaintiff and all Class Members, except those Class Members who make timely and valid
3 objections pursuant to the terms of this Agreement, expressly waive the right to appeal.

4 64. Preliminary Timeline for Completion of Settlement. The preliminary schedule
5 for notice, approval, and payment procedures carrying out this settlement is set forth in the subsections
6 below. In the event that any deadline or day in this Agreement is a holiday, Saturday or Sunday, the
7 designated date shall be the next business day. This schedule may be modified, depending on whether
8 and when the Court grants necessary approvals and orders notice to the Class and Aggrieved
9 Employees and sets further hearings. In the event of such modification, the Parties shall cooperate in
10 order to complete the settlement procedures as expeditiously as reasonably practicable.

11 a. Preliminary Approval Hearing as permitted by the Court;

12 b. Defendants to provide information described in paragraph 53 b (name,
13 address, dates of employment, etc.) no later than ten (10) days after filing of the Preliminary Approval
14 Order;

15 c. CPT Group, Inc. to mail the Class Notice by U.S. First Class mail to
16 Class Members and Aggrieved Employees no later than ten (10) days after receipt from Defendants
17 of the information described in the preceding subparagraph;

18 d. CPT Group, Inc. to conduct trace/search efforts and send a follow up
19 mailing, no later than ten (10) days after initial mailing, to individuals whose Class Notice was returned
20 as undeliverable or whose listed address is found to be inaccurate or outdated;

21 e. Opt-Out Requests and Objections to the settlement must be postmarked
22 no later than forty-five (45) days after the date of initial mailing of the Class Notice;

23 f. CPT Group, Inc. will provide to the Parties, and to the Court as directed
24 by the Parties, information regarding Opt-Out Requests and written objections or statements of
25 intention to object to the settlement received from Class Members on a weekly basis until the close of
26 the Exclusion Period;

1 g. Class Counsel will file a timely motion for final approval of the
2 settlement by the date set by the Court, or if no date is set, at least sixteen (16) court days prior to the
3 scheduled Final Approval Hearing date;

4 h. The Parties will request a Final Approval Hearing before the Court
5 within a reasonable time after the close of the claims period after the entry of the Final Approval Order
6 and Judgment, or as soon thereafter as the Court will hear the Motion for Final Approval. Defendants
7 shall remit the Funding Payment to CPT Group, Inc..

8 i. Settlement Payments/PAGA Payments to Settlement Class
9 Members/Aggrieved Employees, including the Named Plaintiff, and payments to Class Counsel for
10 litigation costs and expenses and awarded attorneys' fees, and the enhancement award to Named
11 Plaintiff, and payment to the LWDA shall be made by the Settlement Proceeds Distribution Deadlines
12 by mailing of checks by First Class U.S. mail or by wire (as to Class Counsel's payments only)

13 65. Automatic Voiding of Agreement if Settlement Not Finalized. If for any reason
14 the Effective Date does not occur, the settlement shall be null and void and the orders, judgment, and
15 dismissal to be entered pursuant to this Agreement shall be vacated and the Parties will be returned to
16 the status quo prior to entering this Agreement with respect to the Action, as if the Parties had never
17 entered into this Agreement. In addition, in such event, the Agreement and all negotiations, court
18 orders, and proceedings relating thereto shall be without prejudice to the rights of any and all Parties
19 hereto, and evidence relating to the Agreement and all negotiations shall not be admissible or
20 discoverable in the Action or otherwise

21 66. No Injunctive Relief. The Parties agree that the settlement does not include
22 injunctive relief against Defendants or the Released Parties.

23 67. Confidentiality and Non-Disparagement.

24 a. Parties and their counsel will keep the settlement confidential through
25 the date Named Plaintiff files his Motion for Preliminary Approval with the Court.

26 b. Thereafter, the Parties and their counsel agree to make no comments to
27 the media or otherwise publicize the terms of the settlement on any social media or websites, except
28 that Class Counsel may post on its firm website: "The Firm settled a class action with an automobile

1 dealership for \$240,000.” This shall not restrict Class Counsel from responding to inquires posed by
2 Class Members.

3 c. Named Plaintiff and Class Counsel agree to maintain the confidentiality
4 of any documents produced, formally or informally, during the course of the Action. Named Plaintiff
5 and Class Counsel agree to return to Defendants’ counsel or destroy, at Defendants’ option, any
6 information designated as confidential during the course of the Action, including but not limited to
7 any information and/or documents provided to Class Counsel for purposes of mediation.

8 d. Defendants shall direct all inquiries by the Class to the CPT Group, Inc.
9 who shall provide general information about the lawsuit, including responding to any such questions
10 about the lawsuit, by providing neutral information about the settlement consistent with the
11 Agreement.

12 68. Invalidation of Agreement for Failure to Satisfy Conditions. The terms and
13 provisions in paragraphs 1 through 84 of this Agreement are not mere recitals, but are deemed to
14 constitute contractual terms. The Court may allocate less to the Named Plaintiff, Class Counsel, and/or
15 the LWDA than indicated in paragraphs 48a, 48b, 48d, and 48e without impacting the validity and
16 enforceability of the Agreement. The Court may allocate less to CPT Group, Inc. than indicated in
17 paragraph 48c provided the actual amount spent by CPT Group, Inc. is less than the maximum set
18 forth in that Paragraph. Without limiting the generality of the foregoing, if this Agreement is
19 terminated for failure to satisfy any of the terms or conditions of this Agreement:

20 a. Defendants shall not be obligated to create or maintain any type of
21 settlement fund and shall not be obligated to make any Settlement Payment/PAGA Payment to any
22 Settlement Class Member, Aggrieved Employee and/or any payment to Class Counsel or Named
23 Plaintiff.

24 b. The Agreement and all negotiations, Court orders and proceedings
25 relating thereto shall be without prejudice to the rights of the Named Plaintiff, Aggrieved Employees,
26 Class Members, and Defendants, each of whom shall be restored to their respective positions existing
27 prior to the execution of this Agreement, and evidence relating to the Agreement and all negotiations
28 shall not be discoverable or admissible in the Action or any other litigation;

1 c. Defendants will not have waived, and instead expressly reserve, their
2 rights to challenge the continuing propriety of class certification for any purpose; and

3 d. To the extent one exists, the Preliminary Approval Order shall be
4 vacated in its entirety and neither this Agreement, the Preliminary Approval Order, nor any other
5 document in any way relating to any of the foregoing, shall be relied upon, referred to or used in any
6 way for any purpose in connection with any further proceedings in this Action or any related action,
7 including class certification proceedings.

8 69. Notices. All notices, requests, demands and other communications required or
9 permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered by First-
10 Class U.S. mail to Class Counsel, the attorneys listed in the caption above, and CPT Group, Inc., with
11 additional copies to be sent via electronic mail.

12 70. Modification in Writing. This Agreement may be altered, amended, modified
13 or waived, in whole or in part, only in a writing signed by all duly authorized signatories to this
14 Agreement. This Agreement may not be amended, altered, modified or waived, in whole or in part,
15 orally. Any waiver of any provision of this Agreement shall not constitute a waiver of any other
16 provision of this Agreement unless expressly so indicated.

17 71. Ongoing Cooperation. Named Plaintiff and Defendants, and each of their
18 respective counsel, shall cooperate in good faith to execute all documents and perform all acts
19 necessary and proper to effectuate and implement the terms of this Agreement, including but not
20 limited to drafting and submitting the Motions for Preliminary and Final Approval, and defending the
21 Agreement and Final Judgment against objections and appeals. The Parties to this Agreement shall
22 use their best efforts, including all efforts contemplated by this Agreement and any other efforts that
23 may become necessary by order of the Court or otherwise, to effectuate this Agreement and the terms
24 set forth herein.

25 72. Parties' Authority. The signatories hereby represent that they are fully
26 authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

27 73. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
28 they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer,

1 or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
2 or rights herein released and discharged except as set forth herein.

3 74. Binding on Successors. This Agreement shall be binding and shall inure to the
4 benefit of the Parties and their respective successors, assigns, executors, administrators, heirs and legal
5 representatives, including the Released Parties.

6 75. Entire Agreement. This Agreement constitutes the full, complete and entire
7 understanding, agreement and arrangement between Named Plaintiff and the Class
8 Members/Aggrieved Employees on the one hand, and Defendants and Released Parties on the other
9 hand, with respect to the settlement of the Action and the Settled Claims against the Released Parties,
10 including Defendants. This Agreement supersedes any and all prior oral or written understandings,
11 agreements and arrangements between the Parties with respect to the settlement of the Action and the
12 Settled Claims/Settled PAGA Claims against the Released Parties, including the MOU. Except those
13 set forth and included expressly in this Agreement, there are no other agreements, covenants, promises,
14 representations or arrangements between the Parties with respect to the settlement of the Action and
15 the Settled Claims/Settled PAGA Claims against the Released Parties. The Parties explicitly recognize
16 California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which
17 provide that a written agreement is to be construed according to its terms, and may not be varied or
18 contradicted by extrinsic evidence, and agree that no such extrinsic oral or written representations or
19 terms shall modify, vary, or contradict the terms of this Agreement.

20 76. Execution in Counterparts. This Agreement may be signed in one or more
21 counterparts. All executed copies of this Agreement, and photocopies thereof (including facsimile or
22 email copies of the signature pages), shall have the same force and effect and shall be as legally binding
23 and enforceable as the original.

24 77. Captions. The captions and section numbers in this Agreement are inserted for
25 the reader's convenience, and in no way define, limit, construe, or describe the scope or intent of the
26 provisions of this Agreement.

1 78. Governing Law. This Agreement shall be interpreted, construed, enforced, and
2 administered in accordance with the laws of the State of California, without regard to conflict of law
3 rules.

4 79. Reservation of Jurisdiction. Notwithstanding the entry and filing of Final
5 Judgment, the Court shall retain jurisdiction under Section 664.6 of the Code of Civil Procedure and
6 Rule 3.769, Cal. Rules of Court, for purposes of interpreting and enforcing the terms of this
7 Agreement.

8 80. Mutual Preparation. The Parties have had a full opportunity to negotiate the
9 terms and conditions of this Agreement. Accordingly, this Agreement shall not be construed more
10 strictly against one Party than another merely by virtue of the fact that it may have been prepared by
11 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
12 between the Parties, all Parties have contributed to the preparation of this Agreement.

13 81. Warranties and Representations. With respect to themselves, each of the Parties
14 to this Agreement and/or their agents or counsel represent, covenant and warrant that (a) they have
15 full power and authority to enter into and consummate all transactions contemplated by this Agreement
16 and have duly authorized the execution, delivery and performance of this Agreement, and (b) the
17 person executing this Agreement has the full right, power and authority to enter into this Agreement
18 on behalf of the Party for whom he/she has executed this Agreement, and the full right, power and
19 authority to execute any and all necessary instruments in connection herewith, and to fully bind such
20 Party to the terms and obligations of this Agreement, except that the Parties understand that the Named
21 Plaintiff and Class Counsel only have the power to bind Settlement Class Members and Aggrieved
22 Employees to the extent this Agreement is approved by the Court.

23 82. Representation by Counsel. The Parties acknowledge that they have been
24 represented by counsel throughout all negotiations that preceded the execution of this Agreement, and
25 that this Agreement has been executed with the consent and advice of counsel. Further, the Named
26 Plaintiff and Class Counsel warrant and represent that there are no liens on the Agreement, and that
27 after entry by the Court of the Final Judgment, Defendants, through the SA, may distribute funds to
28

1 Settlement Class Members, Aggrieved Employees, LWDA, Class Counsel, and the Named Plaintiff
2 as provided by this Agreement.


3 83. Authorization by Named Plaintiff. Named Plaintiff authorizes Class Counsel
4 to sign this Agreement and further agrees not to request to be excluded from the Class and not to object
5 to any terms of this Agreement. Any such request for exclusion (Opt Out Request) or objection shall
6 therefore be void and of no force or effect.

7 84. Agreement of No Waiver of Arbitration. The Parties agree that Defendants are
8 not waiving their right to arbitration and that the treatment of this settlement as a class case is purely
9 for the purposes of settlement and shall not be argued or deemed to be a waiver of arbitration.

10 85. Escalator Clause. Notwithstanding any foregoing provision, the Parties
11 estimate that Class Members had approximately 7,198 Workweeks Worked from August 18, 2016
12 through June 30, 2021, and this estimate serves as the basis for Plaintiff accepting the settlement.
13 Should the number of Workweeks Worked by Class Members from August 18, 2016 through
14 June 30, 2021 increase by more than 10% of this estimate, the Gross Settlement Amount will increase
15 proportionately over the 10% grace (i.e., if the Workweeks Worked increase by 11%, the Total
16 Settlement Amount will increase by 1%).

17 **IT IS SO AGREED:**

18 Dated: 12 / 17 / 2021

19 

20 JAIME CORONA
21 Plaintiff/Class Representative

22 Dated:

17-16-21

22 FAIRVIEW FORD SALES, INC.
23 

24 By:

24 Its: SECT-TREAS

25 Dated:

17-16-21

25 FAIRWAY FORD SALES, INC.
26 

27 By:

27 Its: SECT-TREAS
28