

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is made and entered into as of the last date written below (the “Effective Date”) by and between:

- (i) Joseph Rogier, Anthony Kent, Ali Avallon, Rory Razon, Connor Devlin, Valerie Underwood, Francis Sebelon, Jason Garrett, Amel Younis, Daniel Dupuis, Cooper Cerulo, Banna Zerai, and Jordon Tetreault (collectively, the “Plaintiffs”), for and on behalf of themselves and all others similarly situated (the “Settlement Classes,” as further defined below); and
- (ii) Herbert G. Chambers, James Duchesneau, Alan McLaren, Jennings Road Management Corp., Herb Chambers of Burlington, Inc., Herb Chambers Route 9, Inc., Herb Chambers of Westborough, Inc., Herb Chambers Otis Street Inc., Herb Chambers of Natick, Inc., Herb Chambers 1186, Inc., Herb Chambers 1168 Inc., Herb Chambers 1172, Inc., Herb Chambers 128, Inc., Herb Chambers 22 Brighton Ave., Inc., Herb Chambers 395 Broadway, Inc., Herb Chambers of Lynnfield, Inc., Silver Star, Inc., Herb Chambers 44, Inc., Herb Chambers Andover Street, Inc., Herb Chambers Boston Post Road Inc., Herb Chambers of Sudbury, Inc., Herb Chambers Boston Turnpike, Inc., Herb Chambers of Norwood, Inc., Herb Chambers Commonwealth Avenue, Inc., Herb Chambers I-93, Inc., Herb Chambers I-95, Inc., Herb Chambers of Brookline, Inc., Herb Chambers of Millbury, Inc., Herb Chambers of Millbury II, Inc., Herb Chambers of Wayland, Inc., Herb Chambers of Route 1, Inc., Herb Chambers Washington Street, Inc., Herb Chambers Cambridge Street, Inc., Herb Chambers of Auburn, Inc., Herb Chambers 75 Otis Street, Inc., Herb Chambers Maximus, Inc., Herb Chambers of Medford, Inc., and Dave Dinger Ford, Inc. (collectively, the “Defendants”).

The Plaintiffs and the Defendants are each referred to in this Agreement as a “Party” and, collectively, as the “Parties.”

WHEREAS, the Parties have been engaged in various lawsuits alleging minimum wage, overtime, and other wage-and-hour claims against the Defendants, captioned as *Rogier v. Chambers*, Civil Action No. 1584CV02876 (BLS 1); *Kent v. Chambers*, Civil Action No. 1684CV00849 (BLS 1); *Cerulo v. Chambers*, Middlesex Superior Court, Civil Action No. 1681CV03749; *Dupuis v. Chambers*, Middlesex Superior Court, Civil Action No. 1681CV03665; and *Adem v. Chambers*, No. 1784CV02639 (BLS 2) (collectively, the “Pending Cases”);

WHEREAS, the Defendants deny all of the claims asserted in the Pending Cases and deny that they violated any statutes, laws, or regulations; but the Defendants are entering into this Agreement solely because a settlement would eliminate the burden, risk, uncertainty, and expense of further litigation;

WHEREAS, the Parties engaged in two full-day mediations with a professional mediator and, following further negotiations, reached an agreement as to material settlement terms on or about October 7, 2019, as memorialized in a Term Sheet signed by counsel for all of the Parties;

WHEREAS, the Parties now desire, without any concession or admission of unlawful conduct, liability, fault, or wrongdoing, to enter into this Agreement for the settlement and resolution of all individual and class claims brought by the Plaintiffs in the Pending Cases; and

WHEREAS, in agreeing to the settlement embodied in this Agreement, the Plaintiffs and Class Counsel (as defined below) have considered: (1) the facts developed during discovery and from their investigations, (2) the attendant risks of continued litigation and the uncertainty of the outcome of the Pending Cases, (3) the risk of pending or future legislative action that would adversely affect the rights of the Plaintiffs and the Settlement Classes, and (4) the desirability of permitting the Parties’ proposed settlement to be consummated according to the terms of this Agreement; and have concluded that the terms and conditions of the Agreement are fair, reasonable, and adequate, and in the best interests of the Settlement Classes based on the totality of the circumstances;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed between the Plaintiffs, individually and on behalf of the Settlement Classes, and the Defendants that, subject to the Court’s final approval and the other conditions set forth in this Agreement, the Pending Cases shall be settled,

compromised, and dismissed on the merits and with prejudice in the manner and upon the terms and conditions set forth in this Agreement.

1. Class Definition. The Parties agree that the Settlement Classes shall be defined as follows: (1) all salespeople who worked at a Massachusetts automobile dealership owned by Herbert G. Chambers at any time during the period of 9/23/2012 to 5/8/2019, and who during that period (a) clocked more than 40 hours in one or more weeks or (b) worked on any Sunday or holiday requiring premium pay (“Salesperson Class”); and (2) all Client Care Specialists employed in the sales Business Development Centers (“BDCs”) who worked at a Massachusetts automobile dealership owned by Herbert G. Chambers at any time during the period of 3/15/13 to 5/8/2019, and who during that period (a) clocked more than 40 hours in one or more weeks during that period or (b) worked on any Sunday or holiday requiring premium pay (“BDC Class”).

2. Class Certification. The Parties will request that the Court certify the Settlement Classes for purposes of settlement only. The Parties agree that Fair Work, P.C. will seek designation as “Class Counsel” for the Settlement Class. The Parties agree that the Plaintiffs will seek designation as “Class Representatives” for purposes of the Settlement Classes. If the Court does not approve this Agreement, then the Parties agree that no class will be certified as a result of this Agreement. In particular, the Parties agree that if the Court does not preliminarily and finally approve this Agreement and classwide settlement and/or dismissal with prejudice of the Pending Cases, then neither the Salesperson Class nor the BDC Class will be deemed to have been certified by or as a result of this Agreement, and this Agreement shall not be used as evidence or argument to support any class definitions or certification. In that event, the Plaintiffs will retain the right to seek class certification in the ordinary course of the Pending Cases, the Defendants will retain all rights to oppose class certification, and no Parties’ rights or defenses will be prejudiced in any way by this Agreement.

3. Court Approval of Settlement. The Parties understand and agree that the settlement set forth in this Agreement is subject to Court approval pursuant to Mass. R. Civ. P. 23. The Parties agree to cooperate as necessary to obtain timely approval of this Agreement, so that all required payments can be made as soon as practicable consistent with the requirements of Mass. R. Civ. P. 23. The Parties further agree that if the Court does not approve this Agreement, then for a period of 30 calendar days after the Court’s denial, they shall in good faith attempt to negotiate a substitute classwide settlement agreement with terms that conform as closely to this Agreement as practical but that are otherwise acceptable to the Parties and the Court. If the Parties are unable to negotiate such a substitute agreement, then this Agreement shall be automatically rendered null and void, and the Parties shall be restored to their respective positions as they existed prior to their execution of the Term Sheet.

4. Settlement Fund. As discussed in more detail below, the total amount to be paid by the Defendants to the Plaintiffs, the Settlement Classes, and Class Counsel for full and complete settlement of all individual and class claims in the Pending Cases is \$21,000,000.00 (the “Settlement Fund”), exclusive only of the employer’s share of payroll taxes for any wage payments. The Defendants shall tender the Settlement Fund to Class Counsel or their designee within 30 days of the Court’s final approval under Mass. R. Civ. P. 23 of this Agreement. No amount of the Settlement Fund will revert to the Defendants if the Court approves classwide settlement of the Pending Cases. The Parties agree that the Plaintiffs will propose the following allocation of the Settlement Fund in uncontested or joint motions for approval to be filed with the Court:

- a. \$25,000.00 as incentive payments to each of the Plaintiffs, totaling \$300,000.00 for the 12 above-named Plaintiffs;
- b. \$7,000,000.00 as attorneys’ fees to Class Counsel, representing one-third of the Settlement Fund;
- c. Reimbursement for costs incurred or to be incurred by Class Counsel in connection with the Litigation and with the administration of this Agreement, including fees paid to a third party administrator, in an amount up to \$100,000.00;
- d. A Dispute Fund of up to \$50,000.00, which shall be used to resolve any disputes about late-filed claims or other unanticipated issues. All such disputes shall be resolved by the third-party administrator (“TPA”) and Class Counsel in their discretion, but subject to review by the Court if requested by any aggrieved party; and

- e. All remaining Settlement Funds (in an amount of at least \$13,550,000.00, referred to here as the “Class Fund”) to be paid to eligible members of the Settlement Classes, reasonably in proportion to their potential damages based on data provided by the Defendants. The Settlement Funds shall be allocated to the two Settlement Classes in amounts reasonably proportional to the estimated damages for those two classes, with 90.7% to be allocated to the Salesperson Class and 9.3% to be allocated to the BDC Class.

5. Employee Records & Calculation of Settlement Payments. Class Counsel is responsible for calculating each class member’s proposed share of the Settlement Funds based on a formula reasonably related to the amount of their alleged damages, based on data provided by the Defendants. Within 30 days after the Effective Date, the Defendants will provide reasonably available records in electronic, machine readable format of the Settlement Classes’ dates of service, as well as the names and current or last-known mailing and/or email addresses of all members of the Settlement Classes.

6. Third Party Administrator (“TPA”). Class Counsel shall retain a third-party administrator, who will be responsible for, among other things, sending claim forms, receiving and processing claim forms, researching changed addresses, issuing payments, submitting tax reports and deposits, and any associated responsibilities, all pursuant to this Agreement and as further directed by any Court order.

7. Approval Process. As soon as practicable, Class Counsel will prepare a draft motion seeking preliminary approval of this Agreement and of the proposed notice and claim form to be sent to the Settlement Classes, and the Defendants’ assent to that motion shall not unreasonably be withheld or delayed. Before filing, Class Counsel will provide to the Defendants’ counsel the draft motion seeking preliminary approval and the proposed notice and claim form. Upon conditions ordered by the Court, Class Counsel will subsequently file a motion seeking final approval of this Agreement, and the Defendants’ assent to that motion shall not unreasonably be withheld or delayed. Before filing, Class Counsel will provide to the Defendants’ counsel the draft motion seeking final approval of this Agreement.

In order to facilitate this class-settlement approval process, and only for purposes of settlement approval, the Parties will jointly seek to lift the stays in and consolidate the *Dupuis* and *Cerulo* cases referenced above, which are both pending in Middlesex Superior Court. Then, the Parties will file the preliminary and final motions for approval of this Agreement and classwide settlement of the Salesperson Class and BDC Class in the consolidated *Dupuis* and *Cerulo* case. If the Parties are for any reason unable to seek classwide settlement approval in this way, they will cooperate to seek approval by another mutually-agreeable means.

Further, promptly upon execution of this Agreement, the Parties will file a joint motion with the Supreme Judicial Court to stay the *Cerulo* appeal pending the settlement approval process. The Parties also will seek to continue to the stays entered in the *Rogier* and *Kent* cases. If this Agreement is finally approved, the Parties will file a joint motion to dismiss the *Cerulo* appeal as moot and a joint stipulation and motion to dismiss the *Rogier* and *Kent* cases with prejudice and with each party to bear its own attorneys’ fees, costs, and expenses (except as otherwise provided in this Agreement). If the Agreement is not finally approved, the Parties will request that the stays be lifted in *Rogier*, *Kent*, and *Cerulo* and these matters shall proceed as separately litigated matters. If any of the joint requests to continue or enter stays are denied for any reason, such denials will not impact this Agreement or the Parties’ right and obligations thereunder.

8. Notice, Claim, and Payment Process.

- a. Within 14 days of the date that the Court grants preliminary approval of the Parties’ settlement under this Agreement, the Defendants will provide the TPA with reasonably available records in electronic, machine readable format of the Settlement names and current or last-known mailing and/or email addresses of all members of the Settlement Classes. As soon as practicable following the TPA’s receipt of that information, it shall send the approved notice and claim form to the members of the Settlement Classes. They will have a period of 45 days following issuance of the notice to submit a

claim form or to object to the settlement. If a notice is returned as undeliverable, the TPA will perform a customary skip-trace in an effort to obtain updated address information, and a new notice will be sent promptly to any updated address.

- b. Class members will be eligible to receive their pro rata share of the Class Fund only if they file a timely and materially-complete claim form. Claims may be submitted via a settlement-specific website, email, regular mail, or hand delivery. Class members who demonstrate good cause for submitting a late claim form may be deemed eligible to receive a pro rata share of the Class Fund, but only to the extent there are remaining funds in the Class Fund or the Dispute Fund. Any disputes as to the timeliness, completeness, or eligibility of an individual to submit a claim and receive a share of the Class Fund shall be resolved initially by the TPA, in its discretion, subject to further review by Class Counsel for an abuse of discretion.
- c. Class distributions will be made in two rounds. For the first round, class members who file a claim form will receive the full pro rata share they would be entitled to receive if all class members submitted claims. For the second round, a reminder notice will be sent to class members who have not submitted a claim form, who will then be given 30 days after issuance of the reminder notice to submit a claim form. Any newly-claiming class members will receive the pro rata share that they did not claim or receive in the first round. In addition, all claimants who filed timely claim forms in either the first or second round will receive their pro rata share of any unclaimed amounts. Approximately 120 days after the second round of payments are made, any amounts not finally distributed (including checks that are not cashed by 90 days after the second round of distributions and any amount remaining in the Dispute Fund), will be donated in a *cy pres* award to Dana-Farber Cancer Institute or such other and additional non-profit organizations and foundations as the Court deems appropriate.

9. Deposits & Taxes. The Settlement Fund will be paid into a qualified settlement fund, to be managed by the TPA. The TPA shall distribute the Settlement Fund in the manner approved by the Court. For distributions to the Settlement Class, each eligible class member will receive payments in two parts: (1) approximately 1/3 of the payment shall be in the form of wages, subject to payroll taxes, for which a Form W2 shall issue, and (2) approximately 2/3 of the payment shall be in the form of non-wage income (reflecting the claim for multiple damages), from which no withholdings will be made and for which a Form 1099 shall issue. The Defendants shall be responsible for the employer's share of any required payroll taxes, to be coordinated with the TPA, none of which shall be payable out of the Settlement Fund. Otherwise, all Parties shall be responsible for their own tax obligations resulting from this Agreement.

10. General Release and Dismissal of Individual Claims by Plaintiffs.

Except as specifically set forth in this Agreement, and in consideration and exchange for their share of the Settlement Fund set forth above, and for other good and valuable consideration described herein, the Plaintiffs, on behalf of themselves, their heirs, next of kin, executors, administrators, agents, representatives, attorneys, and assigns, knowingly and voluntarily forever release and discharge the Defendants, together with their past, present, and future affiliates, subsidiaries, contractors, consultants, boards, parent companies, investors, predecessors, successors, assigns, partners, members, owners, shareholders, trustees, officers, directors, employees, attorneys, fiduciaries, insurers, representatives, and agents, both individually and in their business capacities (collectively, the "Releasees") of and from, and waive any rights in and to, all claims, complaints, demands, contracts, grants, lawsuits, causes of action or expenses of any kind (including attorney's fees and costs), (collectively, "Claims"), whether known or unknown, that Plaintiffs now have or ever had against the Releasees or any of them up to and including the Effective Date, including but not limited to Claims related to or arising from any of the Plaintiff's employment with the Defendants and/or the termination thereof, as well as: Claims arising under common law; Claims for breach of contract and in tort; Claims for unpaid compensation, unpaid overtime, unpaid commissions, unpaid minimum wage, unpaid meal breaks, unpaid Sunday or holiday pay, unpaid bonuses, equity, or any employee benefits; Claims for attorney's fees and costs; and Claims arising under federal, state or local labor law, employment laws and laws prohibiting employment discrimination (based on age, gender, pregnancy, race, religion, color, national origin, ancestry, ethnicity, sexual orientation, disability, genetic information, military or veteran status, gender identity and expression, and other protected classes), including but not limited to: Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Fair Labor Standards Act of 1938, the Consolidated

Omnibus Budget Reconciliation Act of 1985, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act of 1990, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, each as amended, and all related regulations, rules or orders, and similar federal, state or local statutes, regulations, rules or ordinances, including but not limited to the Massachusetts Fair Employment Practices Act, the Massachusetts Civil Rights Act, the Massachusetts Overtime Law, the Massachusetts Equal Rights Law, the Massachusetts Weekly Payment of Wages Act, Massachusetts overtime regulations, Massachusetts meal break laws and regulations, and the Massachusetts Earned Sick Time Law, each as amended. The Plaintiffs further agree that they covenant not to sue the Releasees, or any of them, for any Claims described above.

This release does not apply to: (i) the Plaintiffs' entitlement under ERISA to vested retirement or pension benefits; (ii) enforcement of the terms of this Agreement; (iii) any claims to workers' compensation benefits; (iv) any claims for unemployment benefits; and (v) any claims that may not be released by applicable law. Also, nothing in this Agreement shall prohibit any of the Plaintiffs from filing a charge with the Equal Employment Opportunity Commission ("EEOC") or with any other federal, state, or local government agency, including the National Labor Relations Board ("NLRB") and Massachusetts Commission Against Discrimination ("MCAD"), or from participating in an investigation or proceeding of the EEOC or other federal, state or local government agency, including the NLRB and MCAD. However, the Plaintiffs waive the right to any personal monetary recovery or other personal relief should the EEOC or any other federal, state, or local government agency pursue any class or individual charges in part or entirely on the Plaintiffs' behalf on the basis that any such claims have been fully and completely satisfied by the payments the Plaintiffs are receiving under this Agreement.

11. Limited Release and Dismissal of Claims by Settlement Classes. Upon final approval of this Agreement, and for other good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all members of the Settlement Classes will forever release and discharge Defendants and the Releasees of and from any and all Claims for minimum wage, overtime, meal breaks, or claims for premium pay for working on a Sunday or holiday (and all claimed attorneys' fees, costs, and expenses associated with such Claims), as alleged or could have been alleged in any of the Pending Cases, from the beginning of time to the Effective Date.

12. No Admission of Liability. Each Party understands and acknowledges that it is willing to enter into this Agreement to avoid the expense, delay, and uncertainties of further litigation, and not as an admission of any liability. Neither the settlement of the Pending Cases nor the fact that payments are to be made as described in this Agreement, is intended, and shall not be construed as or claimed to be, an admission of wrongdoing or constitute evidence or an admission of any liability or wrongful conduct on the part of Defendants.

13. No Other Actions. Plaintiffs represent and warrant that, other than the Pending Cases, they have not instituted any actions against the Releasees or any of them, and that they have no intention of instituting any actions against the Releasees. Except for the Pending Cases, the Plaintiffs represent that they have not filed, and do not intend to file, any other charges, complaints, grievances, arbitrations, lawsuits, or claims against the Defendants with any local, state or federal agency or court from the beginning of time to Effective Date of this Agreement; and that they will not do so at any time after the Effective Date based upon events occurring before the Effective Date. In the event any agency or court ever assumes jurisdiction of any lawsuit, claim, charge, grievance, arbitration, or complaint, or purports to bring any legal proceeding on a Plaintiff's behalf, such Plaintiff will ask any such agency or court to withdraw from and dismiss any such action, grievance, or arbitration, with prejudice. Further, Plaintiffs' counsel represents and warrants that they do not represent any clients, or have knowledge of any potential clients, with Claims or potential Claims against any of the Releasees other than the Claims alleged in the Pending Cases.

14. Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the Commonwealth of Massachusetts without regard to conflicts of laws principles.

15. Entire Agreement. This Agreement constitutes a single, integrated written contract expressing the entire agreement between the Parties relating to the subject matter addressed herein, and supersedes any and all agreements, understandings, covenants, warranties and discussions, whether written or oral, between them, covering the subject matter addressed herein.

16. Waiver of Rights. No delay or omission by any Party in exercising any rights under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a Party on any one occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

17. Amendments. This Agreement may not be abandoned, supplemented, changed, or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date signed by a duly authorized representative of each of the Parties hereto.

18. Execution of Counterparts. This Agreement may be executed in multiple signature counterparts, each of which shall constitute an original but all of which taken together shall constitute one and the same instrument. Signatures provided via DocuSign, or via scanned or faxed documents, shall have the same effect as an original signature.

19. Interpretation. This Agreement shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

20. Voluntary Act. By signing this Agreement, the Plaintiffs acknowledge and agree that they are doing so knowingly and voluntarily in order to receive the payments and benefits provided for herein. By signing this Agreement, the Plaintiffs represent that they fully understand their right to review all aspects of this Agreement, that they have carefully read and fully understand all the provisions of this Agreement, that they had an opportunity to ask questions and consult with their attorney of choice before signing this Agreement; and that they are freely, knowingly, and voluntarily entering into this Agreement.

END OF AGREEMENT