

EXHIBIT 1

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Subject to Court approval, BMW Financial Services NA, LLC, including its officers, directors, shareholders, employees, agents, representatives, corporate parents, corporate siblings, subsidiaries, predecessors, successors, affiliates thereof, and otherwise related entities (collectively, “BMWFS” or “Defendant”) and Christopher Rawlings (“Representative Plaintiff”) individually, and on behalf of the Class Members (defined below), voluntarily enter into this Class Action Settlement Agreement and Release (this “Agreement”) to settle all claims and issues as set forth more fully below. The Representative Plaintiff and the Defendant will be collectively referred to as the “Parties.”

BACKGROUND AND RECITALS

1. On May 5, 2020, Representative Plaintiff filed this case, *Rawlings v. BMW Financial Services NA, LLC*, Case No. 2:20-cv-2289, in the United States District Court for the Southern District of Ohio, Eastern Division (the “Action”). In the Action, Representative Plaintiff brings claims against Defendant on behalf of himself and others similarly situated under the Fair Labor Standards Act (the “FLSA”), 29 U.S.C. §§ 201-219, the Ohio Minimum Fair Wage Standards Act (“OMFWSA”), O.R.C. §§ 4111.01, 4111.03, and 4111.10, and the Ohio Prompt Pay Act (“OPPA”), O.R.C. § 4113.15.

2. In particular, Representative Plaintiff alleged that he and other similarly situated hourly, non-exempt employees who worked at Defendant’s Hilliard, Ohio facility were not paid for all hours worked starting with logging in to Defendant’s computer systems, time tracking system, and numerous virtual software applications/programs through “Citrix.”¹ For background,

¹ See Complaint, ECF No. 1, ¶ 20..

Representative Plaintiff alleged that Defendant, via its collection department(s), customer service department(s), and other departments provides recovery, collection, and various customer services with respect to individuals and others who have purchased BMW automobiles, entered into financial agreements therewith, and other miscellaneous customer service tasks.² In order to accomplish these services, Representative Plaintiff alleged that Defendant employed a variety of employees in the positions of recovery specialists, support associates, re-possession agents, customer service representatives, and/or other positions (hereinafter “Associates”) to primarily engage customers via telephone, which is done through Defendant’s internal systems.³ Representative Plaintiff alleged that Defendant required him and other Associates to start up, boot up, and log in to its computer systems prior to its internal system counting them as “clocked in” for purposes of counting this “boot up” time as compensable.⁴ Representative Plaintiff alleged that this time spent on the computers prior to being counted as “clocked in” was compensable because it was the first principal activity that commenced Associates’ workday.⁵ During workweeks when he and others worked forty (40) or more hours, Representative Plaintiff alleged they are owed unpaid overtime compensation as a result of the “boot up” time.

3. Defendant denies the claims asserted in the Action and asserts that all Associates were appropriately compensated for all time worked.

4. Although there was disagreement and briefing on the issue, the Parties ultimately stipulated to and the Court granted⁶ conditional certification of an FLSA collective action for the

² *Id.* ¶ 12.

³ *Id.* ¶¶ 15–19.

⁴ *Id.* ¶

⁵ *Id.* ¶

⁶ ECF Nos. 48–49.

following individuals: “All nonexempt associates at BMW Financial Services’ office in Hilliard, Ohio during the period of June 29, 2017 to present, who were required to boot up their computers, log into Citrix and have the toolbar open prior to the scheduled start of their shifts and who worked 40 or more hours in one or more workweeks.”⁷

5. A total of approximately 130 individuals (“Opt-In Plaintiffs”) opted in to this Action between Named Plaintiff’s initial efforts and the formal notice process.

6. Thereafter, a meeting was held between Counsel for the Parties, who then proposed a case management schedule. As part of the case management schedule, Defendant was to produce the payroll and time records for the Putative Class Members, which includes the 130 Opt-In Plaintiffs and the remaining Rule 23 putative class members (consisting of those who did not opt in).⁸ The total class size (regardless of whether the individual opted in or not) is thus comprised of 1,293 Associates.

7. To avoid the burden, expense, risks and uncertainty of litigation, the Parties agreed to engage in early settlement discussions.

8. Class Counsel engaged the services of a MA economist to construct a damages model using relevant pay and time records produced or obtained by Defendant and shared the damages model with counsel for Defendant.

⁷ Some Associates covered by the conditional certification were assigned to work at Defendant’s Hilliard, Ohio by temporary staffing agencies Dawson or InnoSource. The Parties have agreed that those Associates are included in this Action without requiring an amendment of the Complaint.

⁸ Payroll and time records for Associates compensated by Dawson or InnoSource were obtained from Dawson and InnoSource.

9. The Parties scheduled a mediation on November 23, 2021 before Michael N. Ungar, of Ulmer & Berne LLP, which took the entire day. However, the Parties were unable to reach an agreement.

10. Over the course of the next two months, the Parties continued to exchange their respective positions. The Parties, through their diligent and good faith negotiations, were able to resolve the Action on or about January 17, 2022 through a Memorandum of Agreement. The terms of that agreement are embodied herein.

11. The purpose of this Agreement is to fully and finally settle all Released Claims (as defined below) Representative Plaintiff, Opt-In Plaintiffs, and any Claimants (as defined below) may have against Defendant.

DEFINITIONS

12. “Approval Order” means the Court’s Order approving this Settlement.

13. “Opt-In Plaintiff” means any Associate whose consent form was filed in this Action.

14. “Claimant” means Representative Plaintiff, Opt-In Plaintiffs, and each Class Member who does not opt-out of the Class Action.

15. “Opt-In Plaintiff Covered Period” means the period which begins on the date which is three years prior to the date on which each Opt-In Plaintiff’s consent form was filed in this Action and ends on May 21, 2021.

16. “Court” means the United States District Court for the Southern District of Ohio, Eastern Division.

17. “Covered Period” means the period from May 5, 2018 to May 21, 2021.

18. “Counsel” means Class Counsel together with Defendant’s Counsel.

19. “Defendant’s Counsel” means Ann Knuth, Marc Kessler, and Steven Seasily, of Hahn Loeser & Parks LLP.

20. “Effective Date” means **thirty-one (31) days** after the Court’s Final Order and Judgment Entry approving the Class Action Settlement.

21. “Class Members” means: “All nonexempt associates at BMW Financial Services’ office in Hilliard, Ohio during the period of May 5, 2018 to May 21, 2021, who were required to boot up their computers, log into Citrix and have the toolbar open prior to the scheduled start of their shifts and who worked 40 or more hours in one or more workweeks.” Class Members include all 130 Opt-In Plaintiffs and the remaining Rule 23 putative class members (consisting of those who did not opt in) for a total class size (regardless of whether the individual opted in or not) of 1,293 individuals, including Representative Plaintiff and Opt-In Plaintiffs.

22. “Global Settlement Fund” means the gross settlement amount of \$950,000.00. The Global Settlement Fund is the sole and maximum payment by Defendant and includes (1) all Settlement Awards (defined below); (2) a Service Payment for Representative Plaintiff; (3) all Class Counsel’s reasonable fees and litigation expenses; and (4) the cost of settlement administration. The Global Settlement Fund does not include Defendant’s required employer contributions with respect to any portions of the Settlement Awards treated as wages under Internal Revenue Service (“IRS”) Form W-2, and these contributions will not be deducted from the Global Settlement Fund.

23. “Net Settlement Fund” means the amount available for individual Settlement Awards, after deducting all attorneys’ fees and litigation expenses, the Service Payment, and the cost of settlement administration.

24. “Notice of Settlement” means the form approved by the Parties’ Counsel, and subject to Court approval, that will be sent to each Class Member that will explain this Settlement, the amount of his or her Settlement Award, the process to object or to opt-out of the Settlement and the Fairness Hearing date and location. A copy of the Notice of Settlement is attached as **Exhibit A.**

25. “Class Counsel” means Matthew J.P. Coffman of Coffman Legal, LLC and Daniel I. Bryant of Bryant Legal, LLC.

26. “Released Claims” means has the meaning set forth in Paragraph 64.

27. “Released Parties” means Defendant and every and all of its present and former parents, subsidiaries, affiliates and each of its and their respective past and current directors, officers, trustees, employees, representatives, agents, employee benefit plans and such plans’ administrators, fiduciaries, trustees, record keepers, and service providers, and each of its and their respective successors and assigns, each and all of them in their personal and representative capacities.

28. “Released Period” refers to the period from May 5, 2017 to the date this Agreement is executed.

29. “Settlement” means the Parties’ resolution of the Action as to Representative Plaintiff, Opt-In Plaintiffs, and the Claimants.

30. “Settlement Administrator” means Analytics Consulting, LLC.

31. “Settlement Administrator Costs” means all settlement administration fees, expenses, and costs incurred by the Settlement Administrator directly or indirectly related to its duties under this Agreement, including but not limited to all fees, expenses, and costs in connection with the Global Settlement Fund and Net Settlement Fund, and those duties related to notice, check cutting and mailing, reports to counsel, court filings, legal and accounting advice relating to the establishment of the Net Settlement Fund and tax treatment and reporting of awards to Class Members, preparation of tax returns (and the taxes associated with such tax returns as defined below), calculating Settlement Awards, and any other related duties.

32. “Settlement Award” means the amount of the Net Settlement Fund that will be paid to each Class Member who becomes a Claimant.

33. “Service Award” means the payments made from the Global Settlement Fund to Representative Plaintiff for his services in bringing and prosecuting the Action, and in consideration for Representative Plaintiff’s Released Claims as defined herein.

**DENIAL OF LIABILITY AND ACKNOWLEDGMENT OF CHANGES IN
TIMEKEEPING POLICIES AND PRACTICES**

34. Defendant agrees that prior to and following the filing of this Action, it has changed policies and practices related to timekeeping to better ensure compliance with the FLSA and Ohio’s wage and hour laws in regard to booting up computers, logging into Citrix and opening the toolbar.

35. While acknowledging that it has changed policies and practices related to timekeeping, Defendant denies liability or wrongdoing of any kind associated with the claims alleged in the Action. Consequently, this Agreement is a compromise, and shall not be construed as an admission of liability, culpability, wrongdoing, or negligence by Defendant or the Released

Parties, for any purpose, and under any circumstance. This Agreement, as well as the negotiations that occurred in connection with its creation, shall not constitute evidence with respect to any issue, or dispute, in any lawsuit, legal proceeding, or administrative proceeding, except for legal proceedings concerning the enforcement or interpretation of this Agreement. The Parties do not concede any claims or defenses that were, or could have been, raised in the Action; rather, they merely negotiated and reached a settlement to avoid further disputes and litigation and the attendant inconvenience and expense.

CERTIFICATION OF THE CLASS

36. For purposes of this Settlement only, the Parties agree and consent to the certification of the Class Members pursuant to Rule 23 of the Federal Rules of Civil Procedure. In the event the Court does not grant preliminary or final approval of the Settlement, the certification of the class shall not constitute evidence or a binding determination that the requirements for certification are satisfied.

DUTIES OF THE PARTIES TO COOPERATE TO OBTAIN COURT PRELIMINARY AND FINAL APPROVAL OF THE SETTLEMENT

37. The Parties will fully cooperate with each other and use reasonable efforts, including all efforts contemplated by this Settlement and any other efforts ordered by the Court, to accomplish the terms of this Settlement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to obtain preliminary and final approval of this Settlement without material modifications and to implement its terms.

SETTLEMENT ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

38. The Parties agree to retain a Settlement Administrator responsible for:

- a. Establishing a Global Settlement Fund as a “Qualified Settlement Fund” within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, *et seq.*;
- b. Issuing all funds from the Global Settlement Fund;
- c. Determining and finalizing the Settlement Awards and the tax withholding amounts and employer payroll tax amounts for Claimants, as applicable;
- d. Preparing, printing, and disseminating the Notice of Settlement to all Class Members;
- e. Processing and maintaining a record of all Class Members who opt out or object to the Settlement and reporting same to the Parties’ Counsel;
- f. Promptly apprising the Parties’ Counsel of the activities of the Settlement Administrator, timely responding to inquiries of the Parties or their Counsel, and copying the Parties’ Counsel on material correspondence;
- g. Mailing Settlement Awards to all Claimants;
- h. Wiring Class Counsel’s attorneys’ fees and litigation expenses;
- i. Mailing the Service Award to Representative Plaintiff;
- j. Reissuing and remailing Settlement checks to Claimants who do not receive or misplace their Settlement Awards;
- k. Mailing reminder postcards to Claimants who have not cashed their Settlement Award checks **sixty (60) days** before the check void date;
- l. Issuing IRS Forms W-2, 1099, and W-9 (if required) for all payments to each Claimant;

m. Ascertaining current addresses for each Notice of Settlement and Settlement Award check returned as undeliverable;

n. Referring to Class Counsel all inquiries by Class Members the Settlement Administrator cannot resolve and/or that involve matters not within the Settlement Claim Administrator's duties specified in this Agreement;

o. Promptly notifying the Parties' Counsel of any material requests or communications made by any Class Member who receives the Notice of Settlement;

p. Maintaining adequate records of its activities, including the date of the mailing of the Notices of Settlement, receipt of returned mail, and other communications, and attempted communications with Class Members, and providing the Parties' Counsel with reports regarding the same;

q. Confirming, in writing to the Parties' Counsel, its completion of the administration of this Settlement and retaining copies of all endorsed Settlement checks; and

r. Such other tasks as customarily and regularly performed by a settlement administrator and as the Parties mutually agree.

39. Settlement Administrator Costs shall be paid from the Global Settlement Fund. The Settlement Administrator's Costs are estimated to be \$14,789.

SETTLEMENT APPROVAL PROCEDURE

40. This Agreement will become final and effective upon occurrence of all of the following events:

a. Execution of this Agreement by Representative Plaintiff and Defendant.

b. Submission to the Court of a Joint Motion for Preliminary Approval of the Class Action Settlement.

c. Entry of an Order by the Court, proposed by the Parties, granting preliminary approval of the Settlement, and approving the Notice of Settlement and its method of distribution, and setting the date of the Fairness Hearing.

d. Distribution of the Notice of Settlement in the form and manner approved by the Court.

e. Filing with the Court, prior to the Fairness Hearing, a Declaration verifying that the Notice of Settlement was distributed to the Class Members in the form and manner approved by the Court.

f. Convening the Fairness Hearing.

g. Entry of a Final Order and Judgment Entry by the Court, proposed by the Parties, granting final approval of the Class Action Settlement, approving the proposed distributions, and dismissing this Action with prejudice.

h. Occurrence of the "Effective Date".

i. **The Court** retaining jurisdiction over this Action for the purpose of enforcing the terms of the Settlement Agreement.

SETTLEMENT ADMINISTRATION TIMELINES

41. Within **seven (7) days** after Preliminary Approval of the Class Action Settlement, the Settlement Administrator shall open an interest-bearing bank account, which will hold the Global Settlement Fund.

42. Within **fourteen (14) days** after Preliminary Approval of the Class Action Settlement, Defendant shall provide the Settlement Administrator with an Excel spreadsheet listing the names, social security numbers, and last known addresses for the Class Members during the Covered Period, as that information exists in Defendant's records or as obtained from Dawson and InnoSource. The Settlement Administrator shall attempt to confirm the accuracy of the Class Members' addresses through the United States Post Office's National Change of Address database and shall mail the Notice of Settlement to any updated address obtained therefrom.

43. Within **fourteen (14) days** after Preliminary Approval, Plaintiffs' Counsel shall provide the Settlement Administrator with an Excel spreadsheet listing the names and last known addresses of any Opt-In Plaintiffs. The Settlement Administrator shall confirm that these persons are included in the list provided by Defendant. The Settlement Administrator shall use the last known addresses as provided by Plaintiffs' Counsel unless the United States Post Office's National Change of Address database reflects a different address.

44. Within **twenty-eight (28) days** after Preliminary Approval of the Class Action Settlement, Defendant shall deposit the total amount of the Global Settlement Fund (\$950,000.00) into the bank account opened by the Settlement Administrator.

45. Within **twenty-eight (28) days** after Preliminary Approval of the Class Action Settlement, the Settlement Administrator shall send to all Class Members the Notice of Settlement (the "Mailing Date"). If any Notice of Settlement is returned as undeliverable, the Settlement Administrator will promptly attempt to locate such Class Member through other reasonable and legally acceptable means, and, if located, shall promptly mail an additional Notice of Settlement to such person.

**THE OPT OUT PROCESS AND PAYMENT OF CLAIMANT'S SETTLEMENT
AWARDS**

46. The amounts remaining in the Global Settlement Fund —after the Service Award, the attorneys' fees and litigation costs, and the Settlement Administrator's fee have been deducted—will be distributed to Class Members, including Representative Plaintiff and Opt-In Plaintiffs, on a *pro rata* basis based on the number of workweeks that they worked 40 or more hours during the Covered Period or the Opt-In Plaintiff Covered Period, as applicable, in comparison to the total number of workweeks and hours worked by all Class Members. The Gross Settlement Fund reflects the value of approximately 10 minutes of additional work performed each day during the Covered Period. The Settlement Awards after all deductions reflect the value in excess of 6 minutes of additional work performed each day during the Covered Period for Class Members who are not Opt-In Plaintiffs or the Opt-In Plaintiff Covered Period for each Opt-In Plaintiff. All Opt-In Plaintiffs will receive a minimum payment of \$10.00 if their Settlement Award does not otherwise exceed this amount. All Class Members who did not become Opt-In Plaintiffs will receive a minimum payment of \$5.00 if their Settlement Award does not otherwise exceed this amount. Class Counsel will provide a list of all payments for review and approval to Defendant's Counsel. The Notice shall include the Settlement Award amount that the Class Member is expected to receive.

47. Class Members may opt-out of the Class Action Settlement by mailing a request for exclusion to the Settlement Administrator within **sixty (60)** days of the Mailing Date. Persons who are eligible to and do submit a valid and timely request for exclusion will not participate in the Settlement and will not be bound by its terms.

48. Class Members may make objections to the Class Action Settlement by submitting objections to this Settlement Agreement within **sixty (60) days** of the Mailing Date. Any objections must be by in writing, signed by the objector and shall state: (1) the Class Member's full name and address; and (2) the specific reason(s) for the Class Member's objection. This statement must also indicate whether the Class Member intends to appear and object to the Settlement at the Fairness Hearing. Notices and written objections, if any, shall be sent to the Settlement Administrator. Any Class Member who does not serve a timely and compliant objection to the settlement shall not be permitted to present his or her objections to the settlement at the Fairness Hearing and shall be foreclosed from seeking review of the settlement by appeal or otherwise.

49. No later than **fourteen (14) days** before the Fairness Hearing, unless a different date is set by the Court, the Parties will file a Joint Motion for Final Approval of the Class Action settlement.

50. Within **fourteen (14) days** following the Effective Date, the Settlement Administrator shall mail to Claimants their Settlement Awards. If possible, the Settlement Administrator will issue each Claimant one single check representing the total amount of his or her Settlement Award by combining the wage and non-wage portions of his or her Settlement Award. In accordance with the withholding and reporting requirements set forth in this Agreement, the Settlement Administrator shall report the wage income payments to the IRS on IRS Form W-2 and shall report the non-wage income on IRS Form 1099. Within **fourteen (14) days** following the Effective Date, the Settlement Administrator shall send to Plaintiffs' Counsel a list of all Claimants and their contact information.

51. The Settlement Administrator shall mail reminder postcards to Claimants who have not cashed their Settlement Award checks **sixty (60) days** before the check void date.

GLOBAL SETTLEMENT FUND AND TAXES

52. The Global Settlement Fund will be established as a “Qualified Settlement Fund” within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, *et seq.*, and shall be administered by the Settlement Administrator, subject to the ultimate authority of the Court.

53. The Settlement Administrator shall serve as Trustee of the Global Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Global Settlement Fund, including the handling of tax-related issues and payments. The Settlement Administrator shall act in a manner necessary to qualify the Global Settlement Fund as a Qualified Settlement Fund and to maintain that qualification. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Parties agree to any relation-back election required to treat the Global Settlement Fund as a Qualified Settlement Fund from the earliest possible date.

54. The Parties recognize the wage and non-wage awards to the Claimants will be subject to applicable tax withholding and reporting and employer payroll taxes. The Settlement Administrator shall calculate the employer’s share of payroll taxes related to Settlement Award payments treated as wage income and, upon receipt of that calculation, Defendant will, as directed by the Settlement Administrator, deposit into the interest-bearing bank account opened by the Settlement Administrator a payment separate from the Global Settlement Fund to pay the employer’s share of payroll taxes related to Settlement Award payments treated as wage income.

55. All taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Global Settlement Fund, if any, including any taxes or tax detriments that may be imposed on Defendant with respect to income earned for any period during which the Global Settlement Fund does not qualify as a “Qualified Settlement Fund” for federal and state income tax purposes (hereinafter “Settlement Fund Taxes”), and expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any returns described herein or otherwise required to be filed pursuant to applicable authorities) (hereinafter “Settlement Fund Tax Expenses”) shall be paid out of the Global Settlement Fund. Further, Settlement Fund Taxes and Settlement Fund Tax Expenses shall be treated as a cost of the administration of the Global Settlement Fund. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this Section.

56. The Settlement Administrator shall satisfy all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys’ fees and other costs subject to reporting) and shall pay from the Global Settlement Fund any and all taxes, as well as any other obligations with respect to the payments or distributions not otherwise addressed in this Agreement.

57. Any funds paid under this Agreement shall not be considered wages for the purpose of calculating or determining benefits made available to Claimants and other benefit plan participants.

58. In the event of any dispute over a Class Member's dates of employment, the Parties will meet and confer in good faith to resolve the dispute.

TAX TREATMENT OF THE SETTLEMENT AWARDS

59. For tax purposes, the Parties agree Settlement Awards will be: (a) 50 percent (50%) taxable, wage income paid under IRS Form W-2 and subject to ordinary payroll withholdings under federal and state law; and (b) 50 percent (50%) taxable, non-wage income paid under IRS Form 1099. Defendant will make all required employer contributions with respect to any portions of the Settlement Awards paid as wages under IRS Form W-2, and these contribution amounts will not be deducted from the Global Settlement Fund.

ATTORNEYS' FEES AND COSTS

60. Class Counsel will seek an order from the Court approving the payment of their fees for services, in the amount of one-third of the Global Settlement Fund, and for their litigation expenses, which will be paid from the Global Settlement Fund. The Settlement Administrator will wire Plaintiffs' Counsel's Court-approved attorneys' fees and litigation expenses on the Effective Date.

SERVICE AWARD

61. Class Counsel will seek an Order from the Court approving a Service Award for the Representative Plaintiff in the amount of \$10,000.00. The Service Award will be paid from the Global Settlement Fund. For tax purposes, the Parties agree the Service Award will be taxable, non-wage income paid under IRS Form 1099. The Settlement Administrator will mail the Court-approved Service Award on the Effective Date.

REMAINDER OF THE GLOBAL SETTLEMENT FUND

62. All Settlement Award checks that are not negotiated by a Claimant within **one hundred twenty (120) days** of the date of issuance or reissuance, as noted on the Settlement Award checks mailed by the Settlement Administrator to the Claimants, shall be null and void; the associated funds shall not be redistributed among the Claimants, any such funds shall belong to Defendant, and this Agreement shall remain binding on all of the Claimants.

RELEASE OF CLAIMS BY THE REPRESENTATIVE PLAINTIFF AND CLAIMANTS

63. In consideration of his eligibility for the Service Award, the Representative Plaintiff on behalf of himself and his heirs and assigns, hereby forever releases and discharges, through the date of execution of their respective release, the Released Parties from any and all claims, obligations, causes of action, actions, losses, expenses, demands, rights, and liabilities of every kind, nature and description, whether known or unknown, whether anticipated or unanticipated, arising prior to the date that the Court enters the Approval Order, including but not limited to those claims that: (a) were pled in the Action at any time; and/or (b) could have been pled in the Action, including all claims based on any of the following: (i) alleged failure to pay any type of overtime wages, (ii) alleged failure to pay any type of minimum wages, (iii) alleged failure to pay any type of otherwise earned wages (including straight time wages, bonuses, commissions, incentive payments, etc.), (iv) any other alleged federal wage-and-hour violation, (v) any other alleged state wage-and-hour violation; (vi) alleged discrimination, retaliation, harassment, or wrongful discharge, and (vii) any statutory, constitutional, regulatory, contractual or common law claims for wages, damages, restitution, equitable relief, or litigation costs; and (c) this release includes any and all of the following based on any of the matters released by the foregoing: penalties, liquidated damages, punitive damages, attorneys' fees and expenses, litigation costs, restitution, and

equitable relief (“Representative Plaintiff’s Released Claims”). For the avoidance of doubt, this is a complete and general release of all possible claims to the maximum extent allowed under the law. Representative Plaintiff’s Released Claims do not include any workers’ compensation claims, claims for unemployment benefits or claims that cannot be released by law.

64. In consideration for the Settlement Award, Representative Plaintiff and each Claimant forever and fully releases the Released Parties from the “Released Claims.” “Released Claims” means (a) all claims, obligations, demands, damages, losses, actions, rights, causes of action, costs, expenses and liabilities, of whatever kind and nature, character and description, whether known or unknown, and whether anticipated or unanticipated under applicable federal and state wage and hour laws, including the FLSA, during the Released Period, that arose from, are based on, or are in any way related or incidental to such individual’s employment with or assignment to the Company, including those related to payment of minimum or overtime wages, payment for all hours worked, meal and/or rest breaks, keeping records of hours worked or compensation due; and (b) all claims for penalties, liquidated damages, punitive damages, special damages, consequential damages, incidental damages, restitution, equitable relief, violations of any other state or local statutory and/or common law related to these claims, interest, attorneys’ fees, or litigation expenses under the FLSA and any federal and state wage and hour or wage payment laws based on the claims listed in (a) above. Upon final approval of the Settlement by the Court, Representative Plaintiff and each Claimant shall be bound to the release provisions contained herein.

65. Further, in consideration for the payment of their attorneys’ fees and costs, Representative Plaintiff and Claimants hereby release all claims, causes of action, demands,

damages, costs, rights, and liabilities of every nature and description for attorneys' fees, costs, and expenses against the Released Parties arising from or related to the Action.

66. The checks sent to Claimants shall include an endorsement on the back with the following language: "This check has been issued in accordance with a court order in the case *Rawlings v. BMW Financial Services NA, LLC* whereby I agree to waive any right to bring suit under the Fair Labor Standards Act, the Ohio Minimum Fair Wage Standards Act, and all other applicable state laws for unpaid wages through (insert date Agreement is executed)."

NOTICES

67. All notices, requests, demands, and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered by email to the Counsel listed below:

Class Counsel:

Matthew J.P. Coffman
mcoffman@mcoffmanlegal.com

Daniel I. Bryant
dbryant@bryantlegalllc.com

Counsel for Defendant:

Ann Knuth
aknuth@hahnlaw.com

CONSTRUCTION, INTERPRETATION AND MODIFICATION

68. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter included in this Agreement and it shall supersede all prior and contemporaneous negotiations between the parties. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for, or against, any party, regardless of who drafted, or who was principally responsible for drafting, this Agreement, or any specific term

or condition in this Agreement. The Parties participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, the Parties may not claim any ambiguity in this Agreement should be construed against another.

69. If there is a conflict between this Agreement and any other document related to this Settlement, the Parties intend for this Agreement to control.

70. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. The Parties agree this Agreement is to be construed according to its terms and it may not be varied, or contradicted, by extrinsic evidence.

71. This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of Ohio, and shall be subject to the continuing jurisdiction of the Court. The Parties agree that if either Party breaches any of the terms and conditions of this Agreement, the non-breaching Party shall be entitled to reasonable attorneys' fees and expenses incurred in enforcing the terms and conditions contained herein.

72. If any provision of this Agreement, except the Release, is held by a court of competent jurisdiction to be void, voidable, unlawful, or unenforceable the remaining portions of this Agreement will remain in full force and effect to the extent the effect of this Agreement, as well as the obligations of the Parties, remains materially the same.

73. This Agreement may not be modified or amended, except in writing, signed by the Parties or their counsel, and as approved by the Court. This Agreement, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to

consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.


74. This Agreement is binding upon, and shall inure to the benefit of, the Parties. Without limiting the foregoing, this Agreement specifically shall inure to the benefit of Defendant as well as its present and former owners, stockholders, predecessors, successors, joint ventures, assigns, agents, directors, officers, board members, employees, representatives, insurers, attorneys, parents, subsidiaries, benefit plans, plan fiduciaries, affiliated divisions and companies, and all persons acting by, through, under, or in concert with, any of them; likewise, this Agreement shall be binding upon Representative Plaintiff, Opt-In Plaintiff and the Claimants.


CONTINUING JURISDICTION

75. The Parties agree to move for the Court to retain continuing jurisdiction to construe, interpret, and enforce the provisions of this Agreement; to supervise the administration and distributions from the Global Settlement Fund; and to hear and adjudicate any dispute or litigation arising from, or related to, this Agreement, or issues of law and facts asserted in the Action.

WHEREFORE, having fully read and understood the terms of this Agreement, the Parties sign their names below with the intention that they shall be bound by it.

DATED: <i>3/11/2022</i>	DEFENDANT BMW FINANCIAL SERVICES NA, LLC By: <u><i>Stefan Richmann</i></u>
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	Its: <u>CEO</u>
	By: <u></u> <u>Ole Jensen</u>
	Its: <u>CFO</u>

DATED:	REPRESENTATIVE PLAINTIFF CHRISTOPHER RAWLINGS
	<u></u> Christopher Rawlings (Mar 4, 2022 12:53 EST)