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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

EVARISTO AYARD, an individual, on
behalf of himself and all other aggrieved
employees, LUKE PUGH, an individual, on
behalf of himself and all other aggrieved
employees; and RAY POOTA, an
individual, on behalf of himself and all other
aggrieved employees,

Plaintiffs,

v.

KUNI REDWOOD MOTORS, LLC, a
Delaware limited liability company; KUNI
ENTERPRISES, LLC; an Oregon limited
liability company; KUNI SDA, LLC, a
Delaware limited liability company;
HOLMAN NATIONAL RETAIL
HOLDINGS, LLC, a Delaware limited
liability company; KUNI SDP, LLC, a
Delaware limited liability company; KUNI
SDL, a Delaware limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: 20CV367003
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Maureen A. Folan, Dept. 6*

**PRIVATE ATTORNEYS GENERAL ACT
STIPULATION OF SETTLEMENT AND
RELEASE**

Complaint Filed: June 5, 2020
FAC Filed: November 11, 2020
Trial Date: Not Set

1 **PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AND RELEASE**

2 This Private Attorneys General Act Settlement Agreement and Release (“Stipulation of
3 Settlement” or “Agreement”) is made and entered into by and between Evaristo Ayard, Ray
4 Poota, Luke Pugh, Rebecca Drake, and Zachary Lemas, on behalf of themselves and all other
5 aggrieved employees and the State of California, on the one hand (“Plaintiffs”), and Kuni
6 Redwood Motors, LLC, Kuni Enterprises, LLC, Kuni SDA, LLC, Holman National Retail
7 Holdings, LLC, Kuni SDP, LLC, Kuni SDL, LLC, and Roseville Volkswagen, LLC
8 (“Defendants”) on the other hand. Plaintiffs and Defendants are collectively referred to herein
9 as the “Parties” and may be individually referred to as a “Party.” This Stipulation of Settlement
10 is made in consideration of the following facts:

11 **WHEREAS**, on March 24, 2020, Plaintiff Evaristo Ayard mailed a PAGA notice letter
12 to Holman Automotive Group, Inc., Kuni Redwood Motors, LLC, Holman Automotive, Inc.,
13 Kuni Enterprises, LLC, Holman National Retail Holdings, LLC, and Kuni SDA, LLC setting
14 forth the alleged Labor Code violations and the facts and theories supporting the alleged
15 violations. On June 5, 2020, Plaintiff Evaristo Ayard filed a representative action entitled
16 *Evaristo Ayard, et al. v. Kuni Redwood Motors, LLC et al.* in Santa Clara County Superior Court,
17 Case No. 20CV367003 (the “Action”) against Holman Automotive Group, Inc.; Kuni Redwood
18 Motors, LLC; Holman Automotive, Inc.; Kuni Enterprises, LLC; Holman National Retail
19 Holdings, LLC; and Kuni SDA, LLC, alleging Labor Code violations as set forth in Plaintiff
20 Evaristo Ayard’s PAGA letter, pursuant to Labor Code § 2698 *et seq.* (“PAGA”) for alleged
21 violations of Industrial Welfare Commission Wage Order and Labor Code §§ 201, 202, 203, 204,
22 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, 2802 (the “Lawsuit”).

23 **WHEREAS**, on June 11, 2020, Plaintiffs Evaristo Ayard and Luke Pugh gave an
24 amended written notice by online filing to the California Labor and Workforce Development
25 Agency (“LWDA”) and by certified mail to Kuni Redwood Motors, LLC, Kuni Enterprises,
26 LLC, Kuni SDA, LLC, Kuni SDL, LLC, Kuni SDP, LLC, and Holman National Retail
27 Holdings, LLC. Plaintiffs Evaristo Ayard and Luke Pugh’s June 11, 2020 amended PAGA
28 notice letter included a proposed amended complaint, adding Luke Pugh as an additional

1 plaintiff, adding Kuni SDL, LLC and Kuni SDP, LLC as additional defendants, and removing
2 Holman Automotive Group, Inc. and Holman Automotive, Inc. as defendants.

3 **WHEREAS**, on June 23, 2020, Plaintiff Ray Poota gave an amended written notice by
4 online filing to the LWDA and by certified mail to Kuni Redwood Motors, LLC, Kuni
5 Enterprises, LLC, Kuni SDA, LLC, Kuni SDL, LLC, Kuni SDP, LLC, and Holman National
6 Retail Holdings, LLC. Plaintiff Ray Poota's June 23, 2020 amended PAGA notice letter included
7 a proposed amended complaint, adding Ray Poota as an additional plaintiff.

8 **WHEREAS**, on August 19, 2020, Plaintiffs gave amended written notices by online
9 filing to the LWDA and by certified mail to Kuni Redwood Motors, LLC, Kuni Enterprises,
10 LLC, Kuni SDA, LLC, Kuni SDL, LLC, Kuni SDP, LLC, and Holman National Retail Holdings,
11 LLC. Plaintiffs' August 19, 2020 amended PAGA notice letters included a proposed amended
12 complaint, adding Rebecca Drake and Zachary Lemus as additional plaintiffs.

13 **WHEREAS**, on November 18, 2020, Plaintiff Evaristo Ayard filed a first amended
14 complaint, adding Luke Pugh and Ray Poota as additional plaintiffs, adding Kuni SDL, LLC and
15 Kuni SDP, LLC as additional defendants, and removing Holman Automotive Group, Inc. and
16 Holman Automotive, Inc. as defendants.

17 **WHEREAS**, the parties have filed a stipulation with the Court regarding Plaintiff
18 Evaristo Ayard, Luke Pugh, and Ray Poota's filing of a second amended complaint, adding
19 Rebecca Drake, and Zachary Lemus as additional plaintiffs.

20 **WHEREAS**, on November 23, 2020, Plaintiffs gave an amended written notice by online
21 filing to the LWDA and by certified mail to Kuni Redwood Motors, LLC, Kuni Enterprises,
22 LLC, Kuni SDA, LLC, Kuni SDL, LLC, Kuni SDP, LLC, Holman National Retail Holdings,
23 LLC, and Roseville Volkswagen, LLC. Plaintiffs' November 23, 2020 amended PAGA notice
24 included a proposed amended complaint, adding Roseville Volkswagen, LLC as an additional
25 defendant.

26 **WHEREAS**, the Parties have stipulated to Plaintiffs' filing of a third amended complaint,
27 adding Roseville Volkswagen, LLC as an additional defendant and intend to submit a stipulation
28 to the Court regarding the same after the expiration of the sixty-five (65) day notice period set

1 forth in California Labor Code § 2699.3(a).

2 **WHEREAS**, Plaintiffs exhausted their administrative remedies under PAGA by giving
3 notice to the LWDA of the alleged Labor Code violations and the facts and theories to support
4 such violations. Defendants deny all of the allegations in the Lawsuit and in the LWDA notices,
5 and deny that they have committed any misconduct, statutory or regulatory violation,
6 wrongdoing, or any other actionable conduct.

7 **WHEREAS**, the Parties understand, acknowledge, and agree that this Stipulation of
8 Settlement constitutes a compromise of the claims asserted in the Lawsuit and that it is the desire
9 and intention of the Parties to affect a final and complete resolution of such claims that Plaintiffs,
10 the State, and all aggrieved employees have against Defendants arising under PAGA (the “PAGA
11 Claim”). The Parties further acknowledge that this Stipulation of Settlement is a negotiated
12 compromise between them, and that it is intended to settle all disputes, including any *bona fide*
13 dispute between the Parties regarding whether the PAGA Class was entitled to any amounts that
14 they had not been paid prior to entry into this Stipulation of Settlement.

15 **WHEREAS**, following a mediation with Steve Rottman on November 19, 2020, the
16 Parties believe and agree that this Stipulation of Settlement provides for a fair, adequate, and
17 reasonable resolution of the PAGA Claim, and have arrived at the settlement in extensive, arms-
18 length negotiations, taking into account all relevant factors, present and potential.

19 **WHEREAS**, California Labor Code section 2699(1)(2) requires Court approval of a
20 settlement of any action filed under PAGA.

21 **WHEREAS**, upon the Effective Date, as defined herein, Plaintiffs, the State, and any and
22 all current and former non-exempt (including employees paid commissions who are exempt from
23 overtime compensation) employees of Kuni Redwood Motors, LLC, Kuni SDP, LLC, Kuni SDA,
24 LLC, Kuni SDL, LLC, and/or Roseville Volkswagen, LLC during the PAGA Period (“PAGA
25 Employees”), shall release Defendants and their present and former officers, directors, members,
26 managers, shareholders, agents, parents, subsidiaries, affiliates, employees, insurers, operators,
27 partners, joint ventures, consultants, attorneys, successors or assigns (all of the foregoing are
28 referred to as the “Released Parties”), from violations of the California Labor Code which are

1 alleged in the LWDA notices filed by Plaintiffs, brought under the Private Attorneys General Act
2 of 2004 (hereinafter referred to as the "Released Claims"). Plaintiffs further generally release all
3 claims against the Released Parties arising from their employment with the Released Parties.

4 Execution of this Settlement by the Plaintiffs is intended to effect a release by each PAGA
5 Employee of Defendants during the period of April 1, 2019 to March 30, 2021 or the date of the
6 final approval of the PAGA Settlement, whichever is earlier (hereinafter called the "PAGA
7 Period") and is intended to include alleged Labor Code violations in the Lawsuit and/or in the
8 LWDA notices submitted by Plaintiffs, as well as any claim for fees or costs, which shall be paid
9 solely from the common fund created by this settlement.

10 **WHEREAS**, Plaintiffs will file a request with the Court to dismiss the Lawsuit with
11 prejudice within 10 calendar days of Defendants' transmittal of the Settlement Sum to the
12 Settlement Administrator, although the Court will retain jurisdiction of the case pursuant to
13 California Code of Civil Procedure § 664.6 to enforce the terms of this Agreement and approval
14 order.

15 **THEREFORE**, in consideration of the promises and agreements contained herein, the
16 Parties agree and covenant as follows:

17 **1. EFFECTIVE DATE:** The effective date shall be the latter of: (a) 61 days after the date
18 on which the Court enters a final order approving this settlement ("Final Order"); or (b) if an
19 appeal, review or writ is sought from the Final Order, the date upon which all appellate and/or
20 other proceedings resulting from the appeal, review or writ have been finally terminated in such
21 a manner as to permit the Final Order to take effect in substantially the form described herein .
22 ("Effective Date").

23 **2. RELEASE:** Upon the Effective Date, all PAGA Employees will release any and all
24 claims asserted in the PAGA Claim or any other claims, under PAGA, that could have been
25 asserted in the Lawsuit, based on the violations of the California Labor Code alleged in the
26 LWDA notices filed by Plaintiffs, including without limitation any and all claims for PAGA
27 penalties for violations of the California Labor Code governing without limitation: meal and rest
28 breaks; unpaid minimum wages, overtime and double time wages; wage statement violations;

1 expense reimbursement; and separation pay violations. Specifically, the Released Claims
2 include claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203,
3 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, 2802. The Parties agree and
4 acknowledge that, to the maximum extent permitted by law, the final order entered pursuant to
5 this settlement will bind all those who would be bound by a judgment if the action had been
6 brought by the LWDA, including Plaintiffs, the LWDA, and the PAGA Employees, with respect
7 to the recovery of civil penalties asserted in the PAGA Claim against the Released Parties.

8 **3. IRS 1099:** With regard to the Individual Settlement Payments to PAGA Employees
9 and Plaintiffs and the Service Payments to Plaintiffs, IRS Form 1099s will be issued. Nothing
10 in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax
11 obligations. Plaintiffs acknowledge that they have obtained no tax advice from Defendants and
12 that neither Defendants nor their attorneys have made any representation concerning the tax
13 consequences, if any, of the Settlement Amount in this Agreement or any payment to be made
14 pursuant to this Agreement. Individual Settlement Payments shall be allocated one hundred
15 percent (100%) as non-wage penalties not subject to payroll tax withholdings.

16 **4. NOTICE.**

17 a. No later than ten (10) calendar days after the Effective Date, Defendants shall provide
18 the Settlement Administrator – Simpluris – with a confidential list of all PAGA Employees
19 employed during the PAGA Period (the “PAGA List”). The PAGA List shall state the
20 employee’s first name and last name, the last known address for each such employee, each
21 employee’s social security number, and each employee’s respective number of pay periods
22 worked during the PAGA Period. Defendants estimate that the total number of pay periods is
23 12,252 as of November 19, 2020. Should this number go up by more than ten percent (10%)
24 before the Court’s approval, the settlement amount will be subject to a pro rata increase per
25 additional pay period, or at Defendants’ option, the PAGA Period will be deemed to end on the
26 date that the total number of pay periods in the PAGA Period exceeds 12,252 pay periods by
27 10%.

1 b. Upon receipt of the PAGA list, the Settlement Administrator shall perform a search
2 based on the National Change of Address Database maintained by the United States Postal
3 Service to update and correct any known or identifiable address changes. The Settlement
4 Administrator shall exercise its best judgment to determine the current mailing address for each
5 PAGA Employee. The address identified by the Settlement Administrator as the current mailing
6 address shall be presumed to be the most current mailing address for each PAGA Employee. The
7 Parties agree that this procedure for notice provides the best notice practicable to PAGA
8 Employees and fully complies with due process.

9 c. All reasonable costs incurred by the Settlement Administrator in connection with the
10 settlement, including (i) translating the Notice of PAGA Settlement to Spanish and printing,
11 mailing, and re-mailing (if necessary) the Notice of PAGA Settlement and Individual Settlement
12 Payments to the PAGA Employees; (ii) preparing and submitting to PAGA Employees and
13 government entities all appropriate tax filings and forms; (iii) computing the amount of and
14 distributing Individual Settlement Payments, the Service Payment, Plaintiffs' Counsel's
15 attorneys' fees and costs, and the LWDA Payment; (iv) establishing a Qualified Settlement Fund,
16 as defined by the Internal Revenue Code; and (v) preparing and submitting filings required by
17 law in connection with the payments required by the Agreement, shall be paid out of the
18 Settlement Sum set forth below. The Notice means the Notice of PAGA Settlement, substantially
19 in the form attached as **Exhibit 1**, which shall be subject to Court approval and which the
20 Settlement Administrator shall mail, in both English and Spanish, to each PAGA Employee along
21 with the Individual Settlement Payment explaining the terms of this Agreement.

22 d. The Parties each represent they do not have any financial interest in the Settlement
23 Administrator or otherwise have a relationship with the Settlement Administrator that could
24 create a conflict of interest.

25 **5. GENERAL RELEASE BY PLAINTIFFS.** In consideration for the Service Payments
26 that Plaintiffs will receive, Plaintiffs (which includes any heirs, successors, assigns and relatives
27 by blood or marriage, of Plaintiffs) hereby release any and all claims, whether known or
28 unknown, under federal law or state law, including but not limited to any claims for

1 discrimination, failure to accommodate, retaliation, wrongful termination, claims arising under
2 the California Labor Code, IWC Wage Orders, Fair Employment and Housing Act, California
3 Family Rights Act, Family Medical Leave Act, Americans with Disabilities Act, or any claim
4 asserted or that may have been asserted in the Lawsuit or otherwise, against the Released Parties,
5 and/or that relate in any way to their employment with the Released Parties or the cessation
6 thereof ("Plaintiffs' Individually Released Claims").

7 Plaintiffs understand that this release includes unknown claims and that they are, as a
8 result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code,
9 which provides:

10 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
11 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
12 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
13 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
14 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
15 **DEBTOR OR RELEASED PARTY."**

16 Plaintiffs also acknowledge that they may hereafter discover facts different from or in
17 addition to those Plaintiffs know or now believe to be true with respect to Plaintiffs' Individually
18 Released Claims described in this Agreement, and Plaintiffs agree that the releases and
19 agreements contained herein shall be and will remain effective in all respects notwithstanding
20 any later discovery of any such different or additional facts. Plaintiffs hereby assume any and
21 all risk of any mistake in connection with the true facts involved in the matters, disputes, or
22 controversies described herein or with regard to any facts which are now unknown to Plaintiffs
23 relating thereto. Plaintiffs warrant and represent that they have not heretofore assigned or
24 transferred to any person not a party to this Agreement any released matter or any part or portion
25 thereof and Plaintiffs shall defend, indemnify, and hold harmless the Released Parties from and
26 against any claim (including for the payment of attorneys' fees and costs actually incurred
27 whether or not litigation is commenced) based on or in connection with or arising out of any such
28 assignment or transfer made, purported or claimed.

25 **6. PAGA SETTLEMENT PAYMENT PROCEDURES:**

26 a. In exchange for the dismissal of the Lawsuit and the releases set forth herein,
27 Defendants agree to pay, in accordance with the terms specified below, the total gross sum of
28 \$650,000.00 (the "Settlement Sum"), which will be apportioned as follows:

1 **(i) ATTORNEYS' FEES:** An award to Plaintiffs' Counsel of attorneys' fees will
2 be paid from the Settlement Sum in an amount to be set by the Court taking into account the total
3 amount that has been made available for the PAGA Employees by the efforts of Plaintiffs'
4 Counsel. The amount awarded shall not exceed one-third (33 1/3%) of the Settlement Sum. Court
5 approval of the Agreement shall not be contingent on the Court's approval of attorney's fees.
6 Defendants agree not to dispute or otherwise object to Plaintiffs' Counsel's request for attorney's
7 fees in an amount not to exceed one-third (33 1/3%) of the Settlement Sum. Plaintiffs' Counsel's
8 attorneys' fees shall be paid no later than thirty (30) calendar days following the Effective Date.

9 **(ii) SERVICE PAYMENT TO PLAINTIFFS:** The amount awarded to
10 Plaintiffs Evaristo Ayard, Ray Poota, Luke Pugh, Rebecca Drake, and Zachary Lemas, as a
11 service payment will be set by the Court in its discretion, not to exceed five thousand dollars
12 (\$5,000.00) each ("Service Payment"). This amount will be paid from the Settlement Sum.
13 Should the Court approve a lesser amount, the un-awarded amount shall remain in the Settlement
14 Sum. An IRS Form 1099 will be issued to each Plaintiff for their Service Payment. Defendants
15 agree not to dispute or otherwise object to Plaintiffs' request for a Service Payment of \$5,000.00
16 each. Plaintiffs' Service Payments shall be paid no later than thirty (30) calendar days following
17 the Effective Date.

18 **(iii) ATTORNEYS' COSTS AND EXPENSES:** Plaintiffs' Counsel will be
19 reimbursed from the Settlement Sum in an amount to be set by the Court for documented out-of-
20 pocket litigation costs and expenses, not to exceed Seventeen Thousand Dollars (\$17,000.00).
21 Defendants agree not to object to or dispute costs in an amount of up to \$17,000.00 for Plaintiffs'
22 Counsel's costs. Plaintiffs' Counsel's costs shall be paid no later than thirty (30) calendar days
23 following the Effective Date.

24 **(iv) SETTLEMENT ADMINISTRATOR PAYMENT:** The Settlement
25 Administrator's payment will be paid from the Settlement Sum in an amount to be set by the
26 Court, not to exceed Nine Thousand Dollars (\$9,000.00). The Settlement Administrator's
27 payment shall be paid no later than thirty (30) calendar days following the Effective Date.
28

1 **(v) PAYMENT TO PAGA EMPLOYEES:** After deducting Plaintiffs'
2 attorney's fees and costs, the Service Payments and the Settlement Administrator payment from
3 the Settlement Sum, 25% of the remaining funds shall be paid and distributed by the Settlement
4 Administrator to PAGA Employees (hereinafter called the "PAGA Employee Fund"). The
5 PAGA Employee Fund shall be paid to the PAGA Employees no later than thirty (30) calendar
6 days following the Effective Date. Each PAGA Employee shall receive a *pro rata* share of the
7 amount of the PAGA Employee Fund ("Individual Settlement Payment"). The Individual
8 Settlement Payment for each PAGA Employee shall be calculated by dividing the PAGA
9 Employee's number of pay periods worked during the PAGA Period by the total number pay
10 periods worked by all PAGA Employees and multiplying that ratio by the PAGA Employee
11 Fund. The Settlement Administrator's determination of the eligibility for and amount of each
12 Individual Settlement Payment shall be binding upon the PAGA Employees and the Parties, yet
13 subject to review by Plaintiffs' Counsel, defense counsel, and the Court. In the absence of fraud
14 or gross negligence, Defendants' records shall be presumed accurate. The PAGA Employees
15 shall not be required to submit a claim in order to receive an Individual Settlement Payment, and
16 no portion of the Settlement Sum shall revert to Defendants or result in an unpaid residue.

17 Any Individual Settlement Payment returned to the Settlement Administrator as non-
18 deliverable shall be re-mailed to the forwarding address affixed thereto. If no forwarding address
19 is provided, the Settlement Administrator shall promptly attempt to determine a correct address
20 by the use of skip-tracing, or other type of automated search, using the name, address, and/or
21 Social Security number of the PAGA Employee involved, and shall then perform a re-mailing to
22 the PAGA Employee whose Individual Settlement Payment was returned as non-deliverable,
23 assuming another mailing address is identified by the Settlement Administrator. If these
24 procedures are followed, notice to PAGA Employees shall be deemed to have been fully satisfied,
25 and if the intended recipient of the Individual Settlement Payment does not receive the Individual
26 Settlement Payment, the intended recipient shall nevertheless remain bound by all terms of the
27 Agreement and the Final Order.

28 The Settlement Administrator will provide an accounting under oath to the Parties of the

1 amounts paid out.

2 **(vi) PAYMENT TO LWDA:** After deducting Plaintiffs' attorney's fees and
3 costs, the Service Payments and the Settlement Administrator payment from the Settlement Sum,
4 75% of the remaining funds shall be paid and distributed by the Settlement Administrator to the
5 LWDA (hereinafter called the "LWDA Payment"). The LWDA Payment shall be paid no later
6 than thirty (30) calendar days following the Effective Date.

7 **(vii) UNCASHED CHECKS:** Settlement Checks issued to PAGA Employees
8 pursuant to this Stipulation of Settlement will expire one hundred and twenty (120) days from
9 the date they are issued by the Settlement Administrator. Any unclaimed funds after the one
10 hundred and twenty (120) day period shall be transmitted to YWCA of San Diego, a nonprofit
11 organization that provides a full spectrum of residential and community services to empower
12 women, men, and children to break the cycle of domestic violence and homelessness and achieve
13 self-sufficiency.

14 **7. COURT APPROVAL:** Should the Court not approve this Stipulation of Settlement,
15 the Parties shall request leave and work jointly to attempt to remedy the Stipulation of Settlement
16 in order to obtain the Court's approval. If despite the Parties' best efforts, the Court still does not
17 approve the Stipulation of Settlement, the Agreement shall become null and void and have no
18 force and effect. Within fifteen (15) business days after the Effective Date, Defendants shall
19 transmit the Settlement Sum to the Settlement Administrator.

20 **8. REPRESENTATIONS AND WARRANTIES:** In further consideration for payment
21 of the Settlement Sum, Plaintiffs represent and warrant that they have the right and exclusive
22 authority to execute this Stipulation of Settlement. Each Party to this Stipulation of Settlement
23 also represents and warrants to, and agrees with, each other Party hereto as follows:

24 8.1. Each Party has carefully read and knows and understands the full contents of this
25 Stipulation of Settlement and is voluntarily entering into this Stipulation of Settlement after
26 having received independent legal advice from their attorneys with respect to the advisability of
27 making the settlement provided for herein and the advisability of executing this Stipulation of
28 Settlement.

1 8.2. In executing this Stipulation of Settlement and in making the settlement provided
2 for herein, no Party relies or has relied on any statement, representation, omission, inducement,
3 or promise of any other Party (or any officer, agent, employee, representative, or attorney for any
4 other Party), except as expressly stated in this Stipulation of Settlement.

5 8.3. Each Party to this Stipulation of Settlement has investigated the facts relevant to
6 this settlement and this Stipulation of Settlement, and all matters pertaining thereto, to the full
7 extent that each Party deems necessary.

8 8.4. Each separately-numbered term of this Stipulation of Settlement is contractual,
9 not merely a recital.

10 8.5. Each of the Parties has participated in the drafting of all provisions of this
11 Stipulation of Settlement, has had an adequate opportunity to read, review, and consider the effect
12 of the language of this Stipulation of Settlement, and has agreed to its terms.

13 **9. CONFIDENTIALITY:** In response to any inquiries Plaintiffs and Plaintiffs' counsel
14 will state that "the case was resolved with Court approval." Plaintiffs' Counsel shall not report
15 the Agreement or its content in any medium or in any publication, shall not post or report
16 anything regarding the claims of Plaintiffs or the PAGA Employees on their website, and shall
17 not contact any reporters or media regarding the Agreement, the Lawsuit, or their content.
18 Nothing in this provision is intended to prohibit: (i) Plaintiffs from discussing this settlement
19 with their spouses, attorneys, or tax advisors; (ii) Plaintiffs from discussing the settlement with
20 other PAGA Employees after the Agreement has been approved by the Court; (iii) Plaintiffs'
21 counsel from citing the settlement in this case as evidence supporting their competence as counsel
22 in wage/hour and/or class action matters in public court filings; or (iv) Plaintiffs' counsel from
23 communicating with Plaintiffs, the PAGA Employees in this case if contacted by a PAGA
24 Employee, the LWDA, or with the court in which this action is pending.

25 **10. CHOICE OF LAW:** The rights and obligations of the Parties under this Stipulation
26 of Settlement shall be construed and enforced in accordance with, and governed by, the laws of
27 the State of California. California law shall govern the interpretation of this Stipulation of
28 Settlement even if a choice of law analysis under state or federal law would dictate that another

1 forum's law be applied.

2 **11. COOPERATION:** Each Party agrees that they will abide by this Stipulation of
3 Settlement and will do all such acts, and prepare, execute, and deliver all such documents, as
4 may be reasonably required to carry out the stated objectives of this Stipulation of Settlement.

5 **12. SEVERANCE:** If any provision of this Stipulation of Settlement is held to be invalid
6 by a court of competent jurisdiction, that provision shall be deemed severed and deleted from
7 this Stipulation of Settlement, and neither that provision nor its severance and deletion shall affect
8 the validity of the remaining provisions. Notwithstanding the foregoing, no portion of any release
9 contained herein may be deemed severed or deleted from this Stipulation of Settlement, except
10 upon waiver in writing by the applicable Released Party.

11 **13. NO ADMISSION OF WRONGDOING:** The Parties agree that this Stipulation of
12 Settlement does not constitute an admission by Defendants or any Released Party, of any of the
13 matters alleged in the Lawsuit or of any violation by any of them of any federal, state or local
14 law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or
15 wrongdoing whatsoever. Neither this Stipulation of Settlement nor anything in this Stipulation
16 of Settlement shall be construed to be or shall be admissible in any proceeding as evidence of
17 liability or wrongdoing by the Released Parties.

18 **14. INTERIM STAY:** The Parties agree to stay and to request that the Court stay all
19 proceedings in the Action, except such proceedings necessary to implement and complete the
20 Agreement and enter the Final Order. In the event that the Agreement does not become final
21 and/or the Effective Date does not occur for any reason, the Parties further agree that, pursuant
22 to Code of Civil Procedure § 583.330(a), the time beginning on November 19, 2020 to the date
23 on which the interim stay of proceedings is lifted shall not be included in computing the five-
24 year period specified in Code of Civil Procedure § 583.310 for the Action.

25 **15. ADDITIONAL TERMS:**

26 15.1 This Stipulation of Settlement is binding upon and shall inure to the benefit of,
27 the Parties hereto and their respective agents, employees, representatives, officers, directors,
28 parents, subsidiaries, assigns, heirs, executors, administrators, insurers, and successors in

1 interest.

2 15.2 Given that all Parties hereto had the opportunity to draft, review, and edit the
3 language of this Stipulation of Settlement, no presumption for or against any Party arising out of
4 drafting all or any part of this Stipulation of Settlement may be applied in any action relating to,
5 connected to, or involving this Stipulation of Settlement. Accordingly, the Parties hereby waive
6 the benefit of any legal principle or rule providing that, in cases of uncertainty or ambiguity, the
7 language of a contract should be interpreted against the Party who caused the uncertainty or
8 ambiguity to exist.

9 15.3 This Stipulation of Settlement may be executed in counterparts. A signature
10 transmitted by way of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

11 15.4 Headings in this Stipulation of Settlement are included solely for convenience
12 and shall not control the meaning or interpretation of any provision of this Stipulation of
13 Settlement.

14 **16. ENTIRE AGREEMENT:** This Stipulation of Settlement sets forth the entire
15 agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental
16 understandings, whether written or oral, between the Parties concerning the subject matter of this
17 Stipulation of Settlement. Plaintiffs acknowledge that they have not relied on any representations,
18 promises or agreements of any kind made to them in connection with their decision to accept the
19 terms of this Stipulation of Settlement, except for the representations, promises, and agreements
20 herein. Any modification to this Stipulation of Settlement must be in writing and signed by
21 Plaintiffs and an authorized officer of Defendants.

22 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
23 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

24 Dated: _____ EVARISTO AYARD

25
26
27 By: _____
28 Evaristo Ayard

1 interest.

2 15.2 Given that all Parties hereto had the opportunity to draft, review, and edit the
3 language of this Stipulation of Settlement, no presumption for or against any Party arising out of
4 drafting all or any part of this Stipulation of Settlement may be applied in any action relating to,
5 connected to, or involving this Stipulation of Settlement. Accordingly, the Parties hereby waive
6 the benefit of any legal principle or rule providing that, in cases of uncertainty or ambiguity, the
7 language of a contract should be interpreted against the Party who caused the uncertainty or
8 ambiguity to exist.

9 15.3 This Stipulation of Settlement may be executed in counterparts. A signature
10 transmitted by way of e-mail, facsimile, or Doc-u-Sign shall serve as an original for all purposes.

11 15.4 Headings in this Stipulation of Settlement are included solely for convenience
12 and shall not control the meaning or interpretation of any provision of this Stipulation of
13 Settlement.

14 **16. ENTIRE AGREEMENT:** This Stipulation of Settlement sets forth the entire
15 agreement between the Parties hereto and fully supersedes any and all prior and/or supplemental
16 understandings, whether written or oral, between the Parties concerning the subject matter of this
17 Stipulation of Settlement. Plaintiffs acknowledge that they have not relied on any representations,
18 promises or agreements of any kind made to them in connection with their decision to accept the
19 terms of this Stipulation of Settlement, except for the representations, promises, and agreements
20 herein. Any modification to this Stipulation of Settlement must be in writing and signed by
21 Plaintiffs and an authorized officer of Defendants.

22 IN WITNESS WHEREOF, the parties knowingly and voluntarily executed this Private
23 Attorneys General Act Settlement Agreement and Release as of the date set forth below.

24 Dated: Apr 13, 2021

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EVARISTO AYARD

26 By: 
27 Evaristo Ayard (Apr 13, 2021 17:00 PDT)

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Evaristo Ayard

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Dated: Apr 12, 2021

RAY POOTA

By: 
RAY POOTA (Apr 12, 2021 20:18 PDT)
Ray Poota

Dated: _____

LUKE PUGH

By: _____
Luke Pugh

Dated: _____

REBECCA DRAKE

By: _____
Rebecca Drake

Dated: _____

ZACHARY LEMAS

By: _____
Zachary Lemas

KUNI REDWOOD MOTORS, LLC,
KUNI ENTERPRISES, LLC,
KUNI SDA, LLC,
HOLMAN NATIONAL RETAIL HOLDINGS,
LLC,
KUNI SDP, LLC,
KUNI SDL, LLC,
ROSEVILLE VOLKSWAGEN, LLC

Dated: 4/6/21

By: 
(Signature)
Laura Carlisle
(Printed Name)
CFO
(Title)

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Dated: _____

RAY POOTA

By: _____
Ray Poota

Apr 28, 2021
Dated: _____

LUKE PUGH

By: 
Luke Pugh (Apr 28, 2021 16:00 PDT)
Luke Pugh

Dated: _____

REBECCA DRAKE

By: _____
Rebecca Drake

Dated: _____

ZACHARY LEMAS

By: _____
Zachary Lemas

KUNI REDWOOD MOTORS, LLC,
KUNI ENTERPRISES, LLC,
KUNI SDA, LLC,
HOLMAN NATIONAL RETAIL HOLDINGS,
LLC,
KUNI SDP, LLC,
KUNI SDL, LLC,
ROSEVILLE VOLKSWAGEN, LLC

Dated: 4/6/21

By: 
(Signature)

Laura Carlisle
(Printed Name)

CFO
(Title)

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Dated: _____

RAY POOTA

By: _____
Ray Poota

Dated: _____

LUKE PUGH

By: _____
Luke Pugh

Dated: Apr 13, 2021

REBECCA DRAKE

By: 
Rebecca Drake (Apr 13, 2021 16:50 PDT)
Rebecca Drake

Dated: _____

ZACHARY LEMAS

By: _____
Zachary Lemas

KUNI REDWOOD MOTORS, LLC,
KUNI ENTERPRISES, LLC,
KUNI SDA, LLC,
HOLMAN NATIONAL RETAIL HOLDINGS,
LLC,
KUNI SDP, LLC,
KUNI SDL, LLC,
ROSEVILLE VOLKSWAGEN, LLC

Dated: 4/6/21

By: 
(Signature)
Laura Carlisle
(Printed Name)
CFO
(Title)

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Dated: _____

RAY POOTA

By: _____
Ray Poota

Dated: _____

LUKE PUGH

By: _____
Luke Pugh

Dated: _____

REBECCA DRAKE

By: _____
Rebecca Drake

May 3, 2021
Dated: _____

ZACHARY LEMAS

By: Zachary Lemas
Zachary Lemas (May 3, 2021 21:03 PDT)
Zachary Lemas

KUNI REDWOOD MOTORS, LLC,
KUNI ENTERPRISES, LLC,
KUNI SDA, LLC,
HOLMAN NATIONAL RETAIL HOLDINGS,
LLC,
KUNI SDP, LLC,
KUNI SDL, LLC,
ROSEVILLE VOLKSWAGEN, LLC

Dated: 4/6/21

By: 
(Signature)
Laura Carlisle
(Printed Name)
CFO
(Title)

1 **APPROVED AS TO FORM:**

2 Dated: April 28, 2021

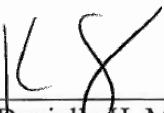
MATERN LAW GROUP, PC

3 By: 
4 Matthew J. Matern
5 Matthew W. Gordon
6 Vanessa M. Rodriguez

7 Attorneys for Plaintiffs Evaristo Ayard, Ray
8 Poota, Luke Pugh, Rebecca Drake and Zachary
9 Lemas

10
11 Dated: April 7, 2021

FISHER & PHILLIPS, LLP

12 By: 
13 Danielle H. Moore
14 Phillip G. Simpler
15 Kathryn M. Evans

16 Attorneys for Defendants Kuni Redwood
17 Motors, LLC, Kuni Enterprises, LLC, Kuni
18 SDA, LLC, Holman National Retail Holdings,
19 LLC, Kuni SDP, LLC, Kuni SDL, LLC, and
20 Roseville Volkswagen, LLC
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EXHIBIT 1

Mailing Date

NOTICE OF SETTLEMENT UNDER THE CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT

Name of PAGA Employee

Address of PAGA Employee

Dear [Insert Name of PAGA Employee]:

Evaristo Ayard, et al. v. Kuni Redwood Motors, LLC et al., Santa Clara County Superior Court,
Case No. 20CV367003 (the “Action”)

You are receiving the enclosed check in settlement of the following action:

Evaristo Ayard, et al. v. Kuni Redwood Motors, LLC et al., Santa Clara County Superior Court, Case No. 20CV367003 (the “Action”). In the Action, Evaristo Ayard, Ray Poota, Luke Pugh, Rebecca Drake, and Zachary Lemas (“Plaintiffs”) pursued various claims against Kuni Redwood Motors, LLC, Kuni Enterprises, LLC, Kuni SDA, LLC, Holman National Retail Holdings, LLC, Kuni SDP, LLC, Kuni SDL, LLC, and Roseville Volkswagen, LLC (“Defendants”) under Labor Code § 2699 *et seq.*, the California Private Attorneys General Act of 2004 (“PAGA”). Defendants denied and continue to deny all of the allegations and liability for any claims in this case. The Court has approved the Settlement Agreement and Release (“Stipulation of Settlement” or “Agreement”) on behalf of the following employees: all non-exempt employees (including employees paid commissions who were exempt from overtime compensation) of Defendants during the PAGA Period. (“PAGA Employees”). The PAGA Period is the period of April 1, 2019 to March 30, 2021, or the date of the final approval of the PAGA Settlement, whichever is earlier.

The enclosed check for \$_____ is your share of the settlement (“Individual Settlement Payment”). Your Individual Settlement Payment was calculated based upon the total number of pay periods that you worked during the PAGA Period. Your check is valid for 120 days from the date of mailing.

As a result of the settlement, you have released Defendants and their present and former officers, directors, members, managers, shareholders, agents, parents, subsidiaries, affiliates, employees, insurers, operators, partners, joint ventures, consultants, attorneys, successors or assigns, from violations of the California Labor Code which are alleged in the LWDA notices filed by Plaintiffs, brought under the Private Attorneys General Act of 2004 (“Released Claims”) for the PAGA Period. The Released Claims include claims for violations of the California Labor Code governing: meal and rest breaks; unpaid minimum wages, overtime and double time wages; wage statement violations; expense reimbursement; and separation pay violations. Specifically, the Released Claims include claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, 2802. The Released Claims are limited to civil penalties pursuant to the PAGA.

If you have any questions about the Settlement, you may contact Plaintiffs’ Counsel or the Settlement Administrator:

Plaintiffs’ Counsel:

MATERN LAW GROUP, PC

Matthew J. Matern, Esq.

Matthew W. Gordon, Esq.

Vanessa M. Rodriguez, Esq.

1230 Rosecrans Avenue, Suite 200

Manhattan Beach, CA 90266

Notice of Settlement
Page **2** of **2**
Phone: (310) 531-1900
Facsimile: (310) 531-1901

Settlement Administrator

[insert Settlement Administrator]

[insert contact info]