

SETTLEMENT AND RELEASE

This Settlement and Release (hereinafter “Settlement” or “Agreement”) is made and entered into by and between Plaintiff DANIEL DE LA CRUZ (hereinafter “Plaintiff”), individually and on behalf of all aggrieved employees, on the one hand, and Defendant SNIDER MOTORS, INC. *dba* ELK GROVE TOYOTA, a California limited liability company with, as third-party beneficiaries of this Agreement, all its respective parent, subsidiary and affiliated entities, all corporations, partnerships, members, divisions and joint ventures, all officers, directors, shareholders, managers, supervisors, partners, employees, agents, attorneys, successors and assigns of SNIDER MOTORS, INC., (“Defendant”), on the other hand. Plaintiff and Defendant are collectively referred to herein as “the Parties.”

This Settlement shall be binding on Plaintiff, on the Aggrieved Employees (as defined below), on California’s state labor law enforcement agencies, and on Defendant and their present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant, subject to the terms and conditions hereof and the approval of the Court.

I. NATURE OF ACTION

1. On April 14, 2021, Plaintiff sent letter to the LWDA (“LWDA Notice Letter”) giving notice of his intent to pursue a representative action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), as codified in California Labor Code § 2698 *et seq.*, on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees.

2. After a minimum of 65 days passed without a response from the LWDA to Plaintiff’s written notice, Plaintiff commenced a representative action under the PAGA for alleged Labor Code violations (as further explained herein) on behalf of himself and other allegedly aggrieved employees.

II. REPRESENTATIONS AND DEFINITIONS

3. “Lawsuit” refers to the civil action for Civil Penalties only under the Private

Attorney General Act (“PAGA”), filed on April 22, 2021, in the litigation entitled *DANIEL DE LA CRUZ, individually, and on behalf of all others similarly situated, v. SNIDER MOTORS, INC., a California corporation dba ELK GROVE TOYOTA; and DOES 1 through 10, inclusive*, which was assigned Sacramento Superior Court Case No. 34-2021-00298766.

4. “PAGA Counsel” shall refer to MOON & YANG, APC, Kane Moon, H. Scott Leviant, Lilit Tunyan.

5. “Counsel for Defendant” and “Defense Counsel” shall refer to John P. Boggs, David J. Reese, and Daniel J. Padova of the law firm, FINE, BOGGS & PERKINS, LLP.

6. “Covered Period” shall mean the period from April 14, 2020, to the earlier of the court’s order granting approval or February 28, 2022.

7. “PAGA Representative” or “Plaintiff” shall refer to Named Plaintiff DANIEL DE LA CRUZ.

8. “Court” refers to the Superior Court of the State of California for the County of Sacramento.

9. “Covered Claims” means claims brought in the Lawsuit pursuant to Labor Code 2699 *et seq.* for PAGA penalties only pursuant to alleged violations California Labor Code and applicable wage laws, including but not limited to: California Labor Code sections 201, 202, 203, 204, 206, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 based on the facts and theories set forth in the Lawsuit and the LWDA Notice Letter.

10. “Aggrieved Employees” shall mean all current and former non-exempt hourly wage employees who worked for Defendant in California at any time during the Covered Period and who worked one or more pay periods during the Covered Period. As of the date of this Agreement, there are approximately 330 Aggrieved Employees. Should the number of Aggrieved Employees increase by more than 15% when the Claims Administrator receives the Employee list, then Defendant agrees to increase the Amount of PAGA Settlement on a proportional basis (i.e. if the number of Aggrieved Employees increases by 16%, then the Settlement Amount will increase by 16%).

11. “Eligible Pay Periods” shall mean the total number of pay periods that Aggrieved Employees worked during the Covered Period.

12. “Settlement” shall mean this Settlement and Release Agreement.

13. “Effective Date” means the latest of: (i) if there are no objections to this Agreement prior to or on the Approval Date, the Approval Date; or (ii) if there are one or more objections to this Agreement prior to or on the Approval Date, and if an appeal, review, or writ is not sought from the Approval Order and Judgment, the 61st day after service of notice of entry of the Approval Order and Judgment on Defendants by Plaintiffs, or on Plaintiffs and Defendants by the Court; or (iii) if an appeal, review, or writ is sought from the Approval Order and Judgment, the day after the Approval Order and Judgment is affirmed or the appeal, review, or writ is dismissed or denied, and the Approval Order and Judgment is no longer subject to further judicial review.

14. After the case was at issue, the Parties engaged in discovery and began to engage in informal arms’ length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved Employees is approximately 330 (including Plaintiff).

15. PAGA Counsel considered the following facts and arguments in determining that the Settlement was fair and reasonable:

a. Defendant argued that Plaintiff is not an “aggrieved employee” with standing to sue.

b. Defendant also argued that Plaintiff’s PAGA claims are unmanageable and would be dismissed or significantly limited on that basis.

c. Defendant’s Factual Defenses. In accordance with the PAGA (Labor Code § 2699(e)(1) and (e)(2)), the court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,

arbitrary and oppressive, or confiscatory.” Defendant argued that after receiving notice of Plaintiff’s allegations, that it implemented compliant pay plans and improved monitoring of rest breaks and meal periods, factors that could mitigate in favor of reducing PAGA penalties.

d. Defendant further produced copies of its meal and rest period policies as well as a sampling of time and payroll records for purposes of discussing settlement. Defendant argued that the time and payroll records demonstrated that Defendant generally complied with meal period laws. Moreover, Defendant argued it need not police breaks to ensure they are taken under California law (see *Brinker*) and that any potential meal period violations would still be subject to the affirmative defense of waiver.

16. Consequently, while PAGA Counsel disagreed with Defendant’s legal analysis above, PAGA Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that the Court could exercise its discretion under PAGA to significantly reduce or altogether waive any penalties under PAGA. In consideration of the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court was persuaded by them, PAGA counsel determined that the Settlement was fair and reasonable. In light of these risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA counsel determined that the Settlement was fair and reasonable.

17. Inability to Pay. Defendant’s counsel also argued that Defendant has limited financial resources, and, as such, raised serious concerns regarding the ability to pay a judgment if Plaintiff prevailed.

18. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

19. Plaintiff and PAGA Counsel contend that they have diligently pursued an investigation of the Aggrieved Employees’ claims against Defendant through formal and informal

discovery.

20. Based on their own independent investigations and evaluations, Defendant and Plaintiff and their respective counsel are of the opinion that the settlement for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the Plaintiff, the Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation and the remedial steps Defendant alleges.

21. The purpose of this Settlement is to settle and compromise the Lawsuit and all Covered Claims that Plaintiff and the Aggrieved Employees have against Defendants and the Releasees (as defined below).

22. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Nothing herein shall constitute an admission by Defendant that the Lawsuit was properly brought as a representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either Defendant or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendant in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification, or administration other than for purposes of administering this Settlement; and (d) shall not

constitute or be deemed a waiver of any right of to compel arbitration of any dispute with an Aggrieved Employee that is not the subject of the releases detailed in this Settlement.

23. The Parties agree that upon full execution of this Settlement, the matter is stayed in its entirety except for any filings and/or motion work necessary to attain Court approval of the Settlement. Should the Court not grant approval of a Motion For Approval of PAGA Representative Action Settlement, or of a Stipulation For Approval Of The PAGA Representative Action Settlement, the stay will be lifted five (5) days thereafter and the Parties will be restored to their positions prior to the Settlement, and the Settlement shall be null and void.

III. TERMS OF SETTLEMENT

24. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself and the Aggrieved Employees, agrees to settle and compromise the Lawsuit and the Covered Claims, subject to the terms and conditions set forth in this Settlement.

25. The Amount of PAGA Settlement. As consideration for the settlement described herein and the release contained in this Settlement, Defendants agree to pay a total settlement of One Hundred Forty Thousand Dollars and No Cents \$140,000.00 (“Settlement Payment”). The Settlement Payment will be allocated as follows:

- a. PAGA Counsel’s attorney fees in the amount of \$49,000 subject to Court Approval;
- b. PAGA Counsel’s request for cost reimbursements in the amount of up to \$12,000.00;
- c. \$5,000 to Plaintiff DANIEL DE LA CRUZ, allocated as an enhancement for serving as the representative aggrieved employee;
- d. Administrative costs of up to \$7,500.00 in settlement administration and distribution of monies to Aggrieved Employees.
- e. The remainder of the Settlement Payment after deducting the items (a), (b), (c), and (d) herein is anticipated to be approximately \$66,500, which shall be designated as PAGA

Penalties to be allocated 75% to the LWDA and the remaining 25% to the Aggrieved Employees pursuant to Labor Code section 2699(i) as outlined below;

26. Allocation and Calculation of the PAGA Penalties. Each Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis. The anticipated total PAGA Penalty Fund will be \$66,500, but may be higher, based upon other awards approved by the Court. Seventy-Five percent (75%) of the anticipated PAGA Penalty Fund (\$49,875) will be paid to the LWDA as required by Labor Code section 2699(i). The remaining Twenty-Five percent (25%) of the anticipated PAGA Penalty Fund (\$16,625) will be distributed to Aggrieved Employees on a pro-rata basis based on the formula set forth below. Each Aggrieved Employee's pro-rata share of the PAGA Penalty Fund represents their Individual Settlement Payment.

a. Individual Settlement Calculation. Plaintiff and the Aggrieved Employees shall receive a pro rata share of the anticipated PAGA Penalty Fund allocated to Aggrieved Employees (\$16,625). Plaintiff and each Aggrieved Employee shall receive a pro rata value equal to the ratio of (a) the number of Eligible Pay Periods worked by that employee to (b) the total number of Eligible Pay Periods worked by all employees included in the Aggrieved Employee group. All Individual Settlement Payments made to Aggrieved Employees will be reported on an IRS Form 1099.

b. Fair Formula. The Parties recognize and agree that the precise value of each Aggrieved Employee's Individual Settlement Payment is subject to a variety of differing calculations and formulas. The Parties hereby agree that the formula for allocating payments as provided herein is reasonable and designed to provide a fair settlement to the Aggrieved Employees.

27. PAGA Counsel's Fees and Costs. As part of the request for approval of this Settlement, PAGA Counsel will request Court approval of \$49,000 in attorneys' fees. PAGA Counsel will request cost reimbursement in the amount of up to \$12,000.00 for costs incurred by PAGA Counsel. If the Court approves a lesser amount for attorneys' fees and costs, the difference shall be allocated to the PAGA Penalty Fund and distributed pro rata accordingly. Any attorneys'

fees and costs awarded to PAGA Counsel, hereinafter referred to as “PAGA Counsel Fees & Costs,” shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the litigation of Covered Claims and all work remaining to be performed in fully and finally resolving the litigation of Covered Claims, including but not limited to securing Court approval of the settlement, appearing at hearings, making sure that the settlement is fairly and properly administered, appearing at any post-approval matter, all other work that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred or will incur. Defendants agree not to oppose the PAGA Counsel Fees & Costs in the amounts listed herein, or in lesser amounts.

28. Tax Treatment of Settlement Amounts. With regard to settlement payments to Aggrieved Employees and Plaintiff, IRS Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Plaintiff acknowledges that she has obtained no tax advice from Defendant and that neither Defendant nor its attorneys has made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement or any payment to be made pursuant to this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

IV. RELEASE

29. Release of All Claims:

a. Release of All Claims By All Aggrieved Employees. Upon the approval by the Court and non-objection by the LWDA of this Settlement, each Aggrieved Employee (including Plaintiff), shall, for the Covered Period, fully release and forever discharge Defendant

and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant (“Releasees”) from any and all Covered Claims (as defined above) for the time period of April 14, 2020, through the Effective Date as defined herein.

b. Release of All Claims By Plaintiff. Except as otherwise provided herein, in exchange for the consideration described herein, Plaintiff, on his own behalf and on behalf of his descendants, dependents, heirs, executors, administrators, agents, assigns, and successors (collectively, “Plaintiff’s Releasers”), hereby covenant not to sue and fully and unconditionally forever release and discharge Defendant and Defendant’s Releasees including their past, present, and future representatives, directors, officers, employees, agents, attorneys, affiliates, members, and shareholders, as well as all parent companies, affiliated companies, subsidiary companies, affiliates, clients, clients facilities, consultants, agents, attorneys, predecessors, assignors, and/or assigns from and against any and all claims, causes of action, judgments, liens, demands, damages, obligations, suits, contracts, liabilities, losses, costs, and expenses, including, but not limited to, attorneys’ fees and disbursements, or offsets of any nature whatsoever (collectively, “Claims”) that Plaintiff’s Releasers now have, have had, or may hereafter have against Defendant and Defendant’s Releasees arising out of the Parties’ relationship, the cessation of this relationship, including but not limited to those claims arising out of or relating to (i) Plaintiff’s performance and reputation, (ii) harassment, (iii) discrimination, (iv) retaliation, and (v) any Claims arising under the Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Federal Rehabilitation Act, the Employee Retirement Income Security Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, and any other applicable state or federal law which took place prior to the Effective Date. Except for any rights created by this Agreement, this General Release is intended to be interpreted as broadly as possible and to apply to any and

all claims known and unknown available to Plaintiff in any forum, including, but not limited to, any claims for unpaid wages, expense reimbursement, unpaid penalties or premiums, liquidated damages, class or representative actions governing employment (to the fullest extent allowed by applicable law), constructive termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligent or intentional infliction of emotional distress, harassment, discrimination, wrongful termination, negligence, breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel, fraud, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, personal injury; assault, battery, invasion of privacy, false imprisonment, conversion, disability benefits, claims under Labor Code section 132(a), violation of any provision of federal or state law governing employment, and any claim for attorneys' fees or costs. All such claims are forever barred and by this Agreement and the Parties acknowledge their familiarity with California Civil Code § 1542, which is expressly waived by Plaintiff and Defendant and Defendant's Releasees with respect to the facts referenced in the Agreement. California Civil Code § 1542 reads as follows:

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

However, this release shall not apply to claims for workers' compensation benefits or unemployment insurance benefits or any other claims that Plaintiff cannot, by statute, lawfully waive by this agreement.

V. APPROVAL STIPULATION

30. The Parties recognize that in accordance with Labor Code Section 2699(I) Court approval is required in the event of a settlement of a PAGA action on a representative basis.

However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Instead, in order to comply with the requirements of Labor Code Section 2699(l), the Parties shall submit a joint stipulation, or, if the Court rejects the joint stipulation, then a motion to the Court, identifying the key terms of this Settlement and Release agreement and requesting that the Court approve the amount of PAGA penalties provided for in the Settlement (“Approval Stipulation”). The Settlement is contingent upon the approval by the Court. If the Court should fail to approve this Settlement in the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court’s questions or concerns and resubmit the Approval Stipulation or motion. If, after the Parties are unable to obtain approval of the terms of the Settlement, or (b) the Court’s approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys’ fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

VI. ADMINISTERING THE SETTLEMENT

31. Subject to the Court approval of this Settlement, the payment of the Settlement amounts shall be paid as follows:

a. Defendant will fund with the settlement administrator a total of \$140,000.00, no later than twenty (20) calendar days after the Court’s Order approving this settlement.

32. No later than twenty (20) calendar days of the Effective Date, Defendant shall provide the settlement administrator a list of Aggrieved Employee (“Aggrieved Employee List”)

containing the (1) name; (2) last known home address and telephone number; (3) the Aggrieved Employee's social security number; and (4) the number of pay periods for each Aggrieved Employee during the Covered Period. The Aggrieved Employee List will also note whether each Aggrieved Employee is a current or former employee. Neither the Aggrieved Employee List nor any information contained therein shall be distributed to PAGA Counsel at any time. The settlement administrator will distribute the checks to the Aggrieved Employees, at a cost not exceeding \$7,500.

33. Defendant expressly reserves the right to object to payment to any Aggrieved Employee who has separately settled or waived any Covered Claims.

34. No later than 14 calendar days after the Settlement has been fully funded as described in paragraph 32 above, and provided there is no objection by the LWDA as to any material term of the Settlement Agreement prior to Court Approval (excluding costs and attorneys' fees), the settlement administrator will cause payment of checks to the LWDA for penalties, and for all Aggrieved Employees in the Aggrieved Employee List. Concurrently with sending each Aggrieved Employee their share of the Settlement Amount, the Claims Administrator will include a "Notice of PAGA Action Settlement" (attached hereto as Exhibit A) along with each Aggrieved Employee's check. The settlement administrator shall send each Aggrieved Employee their check via U.S. First Class mail to each Aggrieved Employee's address with directions to the Postmaster to return all undeliverable mail to the settlement administrator. For each returned check/notice that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee's by using an address refresher database.

35. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. If there are uncashed checks following this period, the settlement administrator will send that uncashed funds to the State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the Aggrieved Employee who did not cash his or her check.

VII. DUTIES OF THE PARTIES PRIOR TO APPROVAL

36. Promptly upon execution of this Settlement, Plaintiff shall file an unopposed Motion for Approval of PAGA Representative Action Settlement, and/or the Parties shall jointly apply to the Court for an Order seeking Approval of the PAGA Representative Action Settlement via Stipulation. Counsel for Plaintiff shall be responsible for providing notice of the settlement to the LWDA in accordance Labor Code section 2699(1)(2).

37. The motion for approval, and/or the stipulation for an order will request Court approval of the following:

- a. Approving the amount of PAGA Penalties;
- b. Dismissing the entire Lawsuit with prejudice; and
- c. Waiving all rights to appeal; and
- d. Attorney fees and costs; and
- e. Claim Administration costs.

38. In conjunction with the motion for approval, and/or the stipulation for an order, the Parties will submit a proposed order requesting approval of the PAGA penalties provided for in the Settlement.

VIII. PARTIES' AUTHORITY

39. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

40. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendants and its

counsel, take all necessary steps to secure the approval of this Settlement from the Court.

X. NO PRIOR ASSIGNMENTS

41. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein. None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, PAGA Counsel (which includes Plaintiff's Counsel), or Defense Counsel without the express written consent of each other Party and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person.

XI. NO ADMISSION

42. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expense. Defendant denies that it has engaged in any unlawful activity, that it has failed to comply with the law in any material respect, or that it has any liability to anyone under the claims asserted in the Lawsuit. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission of liability or wrongdoing by Defendant.

XII. NON-EVIDENTIARY USE

43. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties, including but not limited to, evidence of a presumption, concession, indication,

or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

XIII. NULLIFICATION

44. If (a) the LWDA objects or (b) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (c) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES

45. Except as specifically set forth herein, each Party shall bear its/his/her own attorneys' fees, costs, and expenses, taxable or otherwise, incurred by him/her/it arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Agreement.

XV. CONSTRUCTION

46. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff (on behalf of herself and all other Aggrieved Employees) and Defendant regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with

Defendant, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. Consequently, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XVI. CAPTIONS AND INTERPRETATIONS

47. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XVII. MODIFICATION

48. This Settlement may not be amended, changed, altered, or modified, except in writing and signed by the Parties (or their successors-in-interest) hereto. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII. MISCELLANEOUS

49. This Settlement contains the entire Agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's Released Claims, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters that would alter or change the terms of this Agreement. No representations, warranties, or

inducements have been made to any party concerning this Agreement other than those expressly set forth or referred to herein.

50. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

51. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

52. This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California, irrespective of the State of California's choice of law principles.

53. The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

54. The Sacramento County Superior Court shall retain jurisdiction to enforce this Agreement pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Lawsuit and over all Parties and Aggrieved Employees, to the fullest extent to enforce and effectuate the terms and intent of this Agreement.

55. This Agreement shall not be subject to collateral attack by any Aggrieved Employee. Such prohibited collateral attack shall include, but not be limited to, claims that the Aggrieved Employee failed, for any reason, to timely receive his or her Individual Settlement Payment.

THE PARTIES HAVE READ THE FOREGOING AGREEMENT. THEY HAVE CONSULTED WITH LEGAL COUNSEL REGARDING THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND SIGN THE SAME AS THEIR FREE,

KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS
CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: 11/5/2021

DocuSigned by:
Daniel De la Cruz
E0C5BE027667452

DANIEL DE LA CRUZ, for Himself and
as a representative of other Aggrieved Employees

DATED: _____

SNIDER MOTORS, INC.

By: _____

KNOWING, AND VOLUNTARY ACT AND DEED, BEING FULLY AWARE OF ITS
CONSEQUENCES AND ITS FINAL AND BINDING EFFECT.

DATED: _____

DANIEL DE LA CRUZ, for Himself and
as a representative of other Aggrieved Employees

DATED: 11/12/2021


SNIDER MOTORS, INC.

By: JORDAN KUYKENDALL

Exhibit “A”

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF SACRAMENTO**

This is NOT a solicitation.

This is NOT a lawsuit against you and you are NOT being sued.

NOTICE OF SETTLED REPRESENTATIVE ACTION

If you were employed by SNIDER MOTORS, INC. dba ELK GROVE TOYOTA, as an hourly, non-exempt employee at any time during the time-period from April 14, 2020, and _____, 20____, then you are receiving money from a representative action settlement.

PLEASE READ THIS NOTICE CAREFULLY!

I. What is the Purpose of this Settlement?

This notice is to let you know that there was a representative action lawsuit that settled in the Superior Court of California for the County of Sacramento (the “Court”), and you are considered to be an Aggrieved Employee. The lawsuit was filed by a former employee of SNIDER MOTORS, INC. dba ELK GROVE TOYOTA named DANIEL DE LA CRUZ (“Plaintiff”) in the Court. On _____, 20____, a Judge of the Court approved the Settlement of the Lawsuit entitled *DANIEL DE LA CRUZ, individually, and on behalf of all others similarly situated, Plaintiff vs. SNIDER MOTORS, INC., a California corporation dba ELK GROVE TOYOTA; and DOES 1 through 10, inclusive, Defendants, Sacramento Superior Court Case No. 34-22021-00298766.*

II. What is the Position of Defendants on Settlement?

Defendant SNIDER MOTORS, INC. dba ELK GROVE TOYOTA (“Defendant”) views this settlement as a compromise, to which it has agreed in order to avoid the uncertainty of litigation. Defendant is not admitting to any allegations in the case, and in fact denies that any of its practices at issue in this lawsuit were or are unlawful.

III. Why Did I Get this Notice?

You received this notice because Defendant’s records identify you as an Aggrieved Employee. “Aggrieved Employee” is defined as follows: all current and former non-exempt hourly wage employees who worked for Defendant in California and who worked one or more pay periods between April 14, 2020, and _____.” This notice is informational only. You cannot exclude yourself from this settlement.

IV. Who Are the Parties in this Representative Action?

This lawsuit was filed against Defendants. Plaintiff, a former employee, brought the action on behalf of himself and all Aggrieved Employees, as that term is defined above.

V. What is the Settlement?

Defendant agreed to pay a Settlement Sum of \$140,000. This sum includes the following: (1) the Labor Workforce Development Agency [“LWDA”] Payment of \$49,875; (2) general release payment of \$5,000 to Plaintiff DANIEL DE LA CRUZ; (3) Plaintiff’s attorneys’ fees in the amount \$49,000; (4) actual litigation costs of \$12,000; and (5) settlement administration fees of \$7,500. These amounts were approved by the Court on _____, 20____.

After the deduction of the Court-approved expenses from the Settlement Sum, the remaining sum (“Employee Net Settlement Amount”) will be available to pay Aggrieved Employees. Each Aggrieved Employee is receiving a share that is based on the total number of pay periods the individual Aggrieved Employee worked for Defendant during the time period from April 14, 2020 to _____.

The amount paid to each Aggrieved Employee will be allocated 100% to penalties and will be reported on an IRS Form 1099. The Parties agree that all Aggrieved Employees who receive payment pursuant to this settlement will be responsible for any and all tax obligations associated with such receipt. **You will be responsible for correctly characterizing this compensation for tax purposes and paying any taxes that may be due on the payment you receive. Neither Counsel for Plaintiff, Counsel for Defendants, nor the Settlement Administrator may legally provide you with advice regarding the tax implications of the receipt of this settlement payment.**

VI. What is the Effect of this Settlement on My Rights?

Each Aggrieved Employee is releasing Released Claims (defined below) against the “Released Parties”. The “Released Parties” are Defendant and its present and former parent companies, subsidiaries, divisions, related or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be jointly liable with Defendant.

The “Released Claims” are claims brought in the Lawsuit pursuant to Labor Code § 2699 *et seq.* [“PAGA”] for penalties only pursuant to alleged violations California Labor Code and applicable wage laws, including but not limited to: California Labor Code §§ 201, 202, 203, 204, 206, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802 based on the facts and theories set forth in the Lawsuit and the LWDA Notice Letter. The release will only apply to claims under PAGA that arose during the Settlement Period.

VII. Why Does the Labor Workforce Development Agency Receive Any Money?

PAGA allows private citizens to act on behalf of the State of California to recover civil penalties for violations of California’s Labor Code. Seventy-five percent (75%) of any recovered penalties *must* be given to the State by law. Without PAGA, Plaintiff would not have been able to bring this action on behalf of the Aggrieved Employees. Under this Settlement, \$49,875 be paid to the State as its share of the penalties recovered in this case.

VIII. How Much Did it Cost to Administer the Settlement?

It cost approximately \$7,500, for the Settlement Administrator to fully administer the settlement and that amount is being deducted from the Settlement Sum.

IX. Who is the Settlement Administrator?

The Settlement Administrator is an independent third party selected by Plaintiff and Defendant to send this notice, process and issue settlement checks, and otherwise administer the settlement. The Court has approved ILYM GROUP, INC. to be the Settlement Administrator in this case. You may contact the Settlement Administrator to provide updated contact information, make corrections regarding your employment information at the Company, or ask questions regarding the processing of settlement awards. You may contact the Settlement Administrator at:

Re. *DANIEL DE LA CRUZ vs. SNIDER MOTORS, INC., dba ELK GROVE TOYOTA*

c/o _____

FAX NUMBER: _____

EMAIL: _____

X. Who Can I Contact if I Have Any Questions?

You can contact the Settlement Administrator for this representative action settlement at [Number]. Ask about the *DANIEL DE LA CRUZ vs. SNIDER MOTORS, INC., dba ELK GROVE TOYOTA* settlement.

IMPORTANT: PLEASE DO NOT TELEPHONE THE COURT REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.