

David P. Myers, State Bar No. 206137
Justin Crane, State Bar No. 251107
Ann Hendrix, State Bar No. 258285
THE MYERS LAW GROUP, A.P.C.
9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Telephone: (909) 919-2027
Facsimile: (888) 375-2102

Attorneys for Plaintiff Michael Mitsch

TIM M. AGAJANIAN (SBN 130508)
THOMAS J. MCNAMARA (SBN 289883)
ROPER, MAJESKI, KOHN & BENTLEY
445 South Figueroa Street, Suite 3000
Los Angeles, CA 90071-1619
Telephone: (213) 312-2000
Facsimile: (213) 312-2001
Email: tim.agajanian@rmkb.com
thomas.mcnamara@rmkb.com

Attorneys for Defendant Toyota of Riverside

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

MICHAEL MITSCH,

Plaintiff,

vs.

TOYOTA OF RIVERSIDE, a California
corporation; and DOES 1 through 10

Defendants.

Case No. RIC1312716
(JW Case#A209163-25)

Assigned for All Purposes to:
Hon. Craig G. Riemer
Dept. 5

**DECLARATION OF ANN HENDRIX IN
SUPPORT OF JOINT NOTICE OF
MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AND DISMISSAL OF ACTION**

Date: 9/6/2017
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: November 12, 2013

1
2 **DECLARATION OF ANN HENDRIX**

3 I, Ann Hendrix, hereby declare:

4 1. I am an attorney duly admitted to the practice of law in California, and a member
5 of the bar of this Court. This declaration is based on my personal knowledge. If called upon to
6 do so, I could and would competently testify to its contents.

7 2. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's Private
8 Attorney's General Act Notice.

9 3. Attached hereto as **Exhibit B** is a true and correct copy of the parties' settlement
10 agreement and stipulation for entry of judgment.

11 4. A copy of the proposed settlement and this Joint Motion is being provided to the
12 Labor Workforce Development Agency view its website at <https://dir.tfaforms.net/121>
13 concurrently to the filing of the same with this Court.

14 I swear under penalty of perjury under the laws of the State of California and the United
15 States that the foregoing is true and correct to the best of my knowledge.

16
17 

18 Dated: August 2, 2017

By: _____

19 Ann Hendrix
20
21
22
23
24
25
26
27
28

EXHIBIT A

9327 Fairway View Place, Suite 100
Rancho Cucamonga, CA 91730
Tel: 909-919-2027
Fax: 888-375-2102
www.myerslawgroup.com

M | L | G
THE MYERS LAW GROUP

November 12, 2013

VIA CERTIFIED MAIL

Labor & Workforce Development Agency
800 Capital Mall, MIC-55
Sacramento, CA 95814

**Re: Notice Pursuant to Labor Code Section 2699.3
Violation of Labor Code 1102.5 by Toyota of Riverside**

To Whom It May Concern:

This letter is intended to comply with the requirements of California Labor Code Private Attorneys General Act of 2004 (PAGA), California Labor Code section 2698, *et seq.*, including section 2699.3 with respect to notice of violations of the Labor Code by Toyota of Riverside (employer). A copy of this letter is being sent concurrently to said employer. It is my understanding that the Division of Labor Standards Enforcement (DLSE) is not of the opinion that administrative exhaustion is required, however out of an abundance of caution a copy of this letter is also being sent to the DLSE. Unless the Labor & Workforce Development Agency proceeds against the employer, my client, Michael Mitsch, intends to pursue a civil action against the employer.

Claimant was employed by the employer for several years as a Financial Director. Mr. Mitsch opposed a widespread-practice known as "payment packing," whereby sales representatives and managers routinely quoted customers inaccurately high monthly payments for the purpose of facilitating the inclusion of aftermarket products into the sale. Mr. Mitsch also objected to the staff's routine practice of misrepresenting facts on loan credit applications for buyers. The fraudulent conduct of staff was compounded by the fact that many of the buyers defrauded by the Dealership were non-English speakers and/or unsophisticated and unaware of their rights under state and federal law. Mr. Mitsch also observed that the sales staff would routinely submit credit applications that were obviously modified at different times, without the customer's knowledge, since they contained different fonts, differently colored entries, and different handwriting by the sales staff. He noted that the sales staff would commonly back-date sales contracts or loan agreements without regard for prohibitions against such conduct. Mr. Mitsch also observed that the sales staff would routinely re-write warranties when necessary in order to increase sales. In order to reap the benefits of incentives for selling new cars, sales staff would commonly sell returned cars as "new." Mr. Mitsch was aware that the sales staff had committed forgery on official documents, such as DMV documents. Mr. Mitsch observed that it

Page 2

November 12, 2013

Labor & Workforce Development Agency

Re: Notice Pursuant to Labor Code Section 2699.3

was a general practice for the sales staff to fail to produce information required by the AFSA. During his employment, Mr. Mitsch complained to the sales staff about their illegal conduct to no avail. When Mr. Mitsch brought his concerns to the attention of his superiors, he was confronted with the fact that they were fully aware that the Dealership's sales staff's unlawful conduct, and even worse, endorsed what was going on.

Based on the foregoing, Mr. Mitsch reasonably understood that his superiors expected him to be complicit in their conspiracy to defraud the public as a condition of his continued employment. Refusing to accept these intolerable conditions of employment, Mr. Mitsch resigned from his post as Financial Director after making some final attempts to change the status quo.

Under Cal Lab Code § 1102.5(c), "[a]n employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." Here, Mr. Mitsch suffered retaliatory conduct and mistreatment when he opposed his superiors' expectation that he participate in unlawful schemes.

First and foremost, Mr. Mitsch was subjected to pressure and threats, and felt that he was being forced to aid and abet fraud as a condition of his employment. Mr. Mitsch realized that this was the case when he observed that his superiors had ignored his complaints and, instead, put pressure on him to aid and assist in processing fraudulent loan transactions. In fact, there were several occasions on which Mr. Mitsch was subjected to threats of discharge for voicing his concerns and failing to do enough to cover up the Dealership's unlawful and fraudulent business practices.

It is claimant's position that said employer violated, among other applicable statutory provisions, Labor Code section 1102.5, by retaliating against claimant for objecting to, complaining about and/or reporting unlawful and fraudulent activities. As a direct and proximate result of the forgoing (set forth without limitation), claimant has suffered severe emotional distress and other damages, including but not limited to, loss of back pay, front pay and other financial losses including without limitation the cost of lost employment benefits.

In addition, Mr. Mitsch is entitled to a wage statement that is accurate pursuant to Labor Code Section 226. Mr. Mitsch alleges that he was subjected to an unlawful deduction plan and that his wage statements did not provide all required information. In addition, the employer failed to pay Mr. Mitsch during his employment all wages owed, and was subjected to unlawful deductions, and therefore, wages are owed at his termination, which they were not, in violation of Labor Code Section 201-203. Lastly, the employer's chargeback scheme was in violation of Labor Code Section 223.

Page 3

November 12, 2013

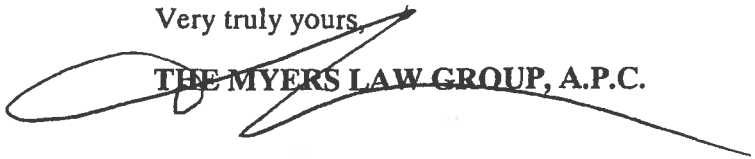
Labor & Workforce Development Agency

Re: Notice Pursuant to Labor Code Section 2699.3

Claimant is thus entitled to applicable damages, penalties, attorneys' fees, and interest set forth in PAGA, Cal. Labor Code section 2698, *et seq.*

We would appreciate hearing from the Labor & Workforce Development Agency at your earliest convenience.

Very truly yours,


THE MYERS LAW GROUP, A.P.C.

David P. Myers
Attorneys for Michael Mitsch

cc:

Toyota of Riverside, a California Corporation
7870 Indiana Ave.
Riverside, CA 92504

Labor Commissioner, State of California
Department of Industrial Relations
Retaliation Complaint Investigation Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825

EXHIBIT B

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made by and between MICHAEL MITSCH ("MITSCH") and TOYOTA OF RIVERSIDE ("TOYOTA"). MITSCH and TOYOTA may be referred to herein separately as a "Party", or collectively as the "Parties".

A. RECITALS

1. TOYOTA initially hired MITSCH as its Financial Director on or about February 1, 2009. MITSCH alleges that he was constructively discharged on or about November 12, 2012.

2. On February 11, 2014, MITSCH filed a First Amended Complaint ("FAC") against TOYOTA in Riverside County Superior Court, Case No. RIC1312716 ("ACTION"). The ACTION is now in binding Arbitration at Judicate West before the Hon. Linda Quinn, Ret., JW Case No. A209163. MITSCH asserted six causes of action for monetary damages on his own behalf: 1) Constructive Discharge in Violation of Public Policy; 2) Unlawful Retaliation in Violation of Labor Code §1102.5; 3) Failure to Compensate for All Wages Earned; 4) Failure to Provide Accurate Wage Statements Under Labor Code §226; 5) Failure to Pay Wages Timely Upon Termination Under Labor Code §203; and 6) Unfair Business Practices in Violation of Cal. Bus. & Prof. Code §§17000, *et seq.* and §§17200, *et seq.* MITSCH's seventh cause of action asserts a representative claim pursuant to the California Private Attorney General Act ("PAGA") set forth in California Labor Code Section 2698, *et seq.* for civil penalties based on alleged wage statement violations as alleged in MITSCH's FAC. MITSCH's seventh cause of action seeks civil penalties pursuant to PAGA on behalf of MITSCH, the Labor and Workforce Development Agency ("LWDA"), and other alleged "aggrieved employees" of TOYOTA for the period of February 1, 2009, through November 12, 2012, as defined by Labor Code Section

2699(c) (*hereinafter* "Aggrieved Employees"). MITSCH seeks general, compensatory, punitive, and statutory damages as well as injunctive relief, attorneys' fees and costs. All of MITSCH's causes of action, allegations and claims against TOYOTA in his FAC are referred to herein as the "CLAIMS". TOYOTA denied and continues to deny all of the allegations in MITSCH's FAC.

3. The Parties understand, acknowledge, and agree that this Agreement constitutes a compromise of MITSCH's CLAIMS, including MITSCH's representative PAGA claim for alleged wage statement violations stated in MITSCH's FAC. The Parties understand, acknowledge, and agree that it is the intention of the Parties to affect a final and complete resolution of MITSCH's representative PAGA claim on behalf of MITSCH, the LWDA, and the Aggrieved Employees for the period of February 1, 2009, through November 12, 2012. The Parties acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by TOYOTA of liability.

4. The Parties understand, acknowledge, and agree that, pursuant to California Labor Code Section 2699(1), the court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to the PAGA.

5. The Parties have agreed to resolve the ACTION and desire to express in this written Agreement the covenants, promises, and understandings with respect to this settlement.

B. RELEASE

NOW THEREFORE, in consideration of the promises and agreements, covenants, and provisions contained in this Agreement, the PARTIES agree and declare as follows:

1. **Settlement Amount, Additional Terms, and Dismissal of Complaint.**

a. TOYOTA agrees to settle, release and compromise MITSCH's

CLAIMS for a total settlement amount of \$210,000.00 (Two hundred and ten thousand dollars) ("Total Settlement Amount"). The Total Settlement Amount is the total amount for the full settlement of all of MITSCH's CLAIMS. The allocation of the Total Settlement Amount will be as follows: \$208,500.00 paid to MITSCH for all CLAIMS with the express exception of his representative PAGA cause of action stated in his FAC; \$1,500.00 (less \$435 for MITSCH's filing fee for this ACTION) paid by TOYOTA (not TOYOTA's insurer) to MITSCH, the LWDA, and the Aggrieved Employees, for MITSCH's representative PAGA cause of action and civil penalties, allocated pursuant to Labor Code Section 2699, as stated in Section B(1)(c) herein. The Parties understand, acknowledge and agree that the court must approve the allocation of PAGA civil penalties stated herein. The Parties further understand, acknowledge and agree that the court's decision shall not modify the Total Settlement Amount of \$210,000.00.

- b.** If the court approves the \$1,500.00 PAGA civil penalties as stated in Section B(1)(c) herein, MITSCH shall receive all payments of the \$208,500.00 portion of the Total Settlement Amount on or before the 30th day after the court executes its Order approving the PAGA civil penalties pursuant to Labor Code Section 2699(1). The \$208,500.00 monetary settlement consideration shall be made payable, in full settlement and release of all CLAIMS described herein, as follows: (a) one check from TOYOTA (not TOYOTA's insurer) made payable to "Michael Mitsch" in

the amount of \$20,000.00, less all payroll and tax withholdings for wages, subject to W-2 reporting as wage income; along with (b) one check from TOYOTA that amounts to \$93,721.14, and (c) one check from TOYOTA's insurer that amounts to \$94,778.86, both of which shall be made payable to "Michael Mitsch and The Myers Law Group" that total \$188,500.00, subject to 1099 reporting as miscellaneous income and payment of attorney's fees and costs. Said payment shall be with no admission of liability, and the Parties agree to bear their own costs of suit, legal expenses, and attorneys' fees. MITSCH will complete and sign IRS Forms W-4 and W-9 and submit them to TOYOTA's counsel concurrently with the signature page executing this Agreement. MITSCH's counsel, The Myers Law Group, will complete and sign IRS Form W-9 and submit it to TOYOTA's counsel concurrently with the signature page executing this Agreement. In consideration of payment, MITSCH and his counsel shall take any and all necessary steps to obtain a dismissal, with prejudice, of his ACTION. At the end of 2017, TOYOTA will issue IRS Forms W-2 and 1099-MISC for the payments described in this paragraph.

- c. From the Total Settlement Amount, TOYOTA (not TOYOTA's insurer) further agrees to pay \$1,500.00 in civil penalties pursuant to the PAGA to MITSCH, the LWDA, and the Aggrieved Employees, the allocation of which is specified herein, in exchange for MITSCH's release of any and all claims for civil penalties asserted or which could have been asserted under California Labor Code Sections 2698, et. seq. against MITSCH on

his behalf and on behalf of the LWDA and the Aggrieved Employees as a representative PAGA claimant. The PAGA civil penalties of \$1,500.00 shall be allocated as follows: \$690.00 (\$1,500.00 minus \$435.00 filing fee)(75% of the civil penalties) shall be paid by TOYOTA (not TOYOTA's insurer) to the LWDA in satisfaction of all PAGA claims in the FAC; \$375.00 (25% of the civil penalties) shall be evenly distributed, pro rata, to MITSCH and the Aggrieved Employees within ninety (90) days after the court approves the allocation of PAGA civil penalties portion of the Agreement. If the court does not approve the \$1,500.00 PAGA civil penalty amount and requires a greater amount, then the amount that the court does approve will reduce the amount MITSCH will receive from TOYOTA (not TOYOTA's insurer) for the non-PAGA settlement payment described in Section B(1)(b). TOYOTA's insurer shall not be responsible for any PAGA civil penalties and shall only pay MITSCH and his counsel the \$94,778.86 amount described in Section B(1)(b) in exchange for the release of any and all CLAIMS against TOYOTA's insurer. The Total Settlement Amount shall not be increased. Counsel for MITSCH shall prepare an Ex Parte Application for Stipulated Order for Court Approval of PAGA civil penalties agreed upon, including the allocations to MITSCH, the LWDA, and the Aggrieved Employees, consistent with Labor Code Section 2699(1). Counsel for MITSCH shall provide a copy of this Agreement to Hon. Linda Quinn, Ret. at Judicate West for the arbitrator's approval, should such approval be necessary.

Counsel for MITSCH shall also provide a copy of this Agreement to the LDWA at the same time it is submitted to the court. Counsel for MITSCH shall also provide a copy of the order that either grants or denies an award of civil penalties to the LDWA. As stated in Section B(l)(a), above, the court's decision will not modify the Total Settlement Amount.

2. **Indemnification.** MITSCH shall be solely responsible for, and is legally bound to make payment of, any taxes determined to be due and owing (including penalties and interest related thereto) by him to any federal, state, local, or regional taxing authority as a result of the Total Settlement Amount. MITSCH understands that TOYOTA has not made, and he does not rely upon, any representations regarding the tax treatment of the sums paid pursuant to this Agreement. Moreover, MITSCH agrees to indemnify and hold TOYOTA harmless in the event that any governmental taxing authority asserts against TOYOTA any claim for unpaid taxes, failure to withhold taxes, penalties, or interest based upon the payment of the Total Settlement Amount. MITSCH agrees to be liable for all personal tax liability associated with this payment, including all federal, state, or local taxes, if any, which are required by law to be paid by MITSCH with respect to this Agreement. TOYOTA will issue IRS Form W-2 to MITSCH in the amount of \$20,000.00, as part of the Total Settlement Amount, as described above. In the event that any person or entity, including, without limitation, MITSCH, any governmental entity, or any authority challenge the taxability of the payment made by TOYOTA under the Agreement or the treatment of this payment for tax purposes, or if it is determined that withholding or other taxes are due and owing with respect to the payment made by TOYOTA under the Agreement, MITSCH agrees to pay those amounts and to indemnify TOYOTA and hold it harmless from any and all liability associated with the challenge and any re-characterization of the payment,

including without limitation all state and federal taxes, interest, penalties, attorneys' fees, and costs.

3. **Medical Liens.** MITSCH and his counsel warrant that MITSCH is not a Medicare beneficiary as of the date of this Agreement. Because MITSCH is not a Medicare recipient as of the date of this Agreement, no conditional payments have been made by Medicare. MITSCH will indemnify, defend and hold TOYOTA, its current or former officers, directors, employees, agents, attorneys, shareholders, affiliates, divisions, subsidiaries, predecessors and successor corporations, assigns and insurers (*hereinafter* "TOYOTA Releasees"), harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from TOYOTA Releasees relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to MITSCH's alleged injuries or claims in this ACTION, MITSCH will defend and indemnify TOYOTA Releasees, and hold TOYOTA Releasees harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities. While it is impossible to accurately predict the need for medical treatment, this settlement is based upon a good faith determination of the parties in order to resolve a disputed claim. The parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider and protect Medicare's interest and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b). The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement,

or MITSCH's eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this liability settlement.

4. **Release of MITSCH's CLAIMS.** MITSCH hereby waives and releases all existing rights to any relief of any kind as to TOYOTA Releasees, including without limitation, all claims, including the CLAIMS, demands, criminal liability, civil liability, obligations, causes, and causes of actions of whatever kind or nature, whether known or unknown, past or present, suspected or unsuspected, including, without limitation, those related in any way to the allegations of the FAC which arise out of, are based upon, or relate to MITSCH's employment with TOYOTA, all claims that arise under Title VII of the Civil Rights Act of 1964, the Private Attorney General Act of 2004, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Fair Labor Standards Act, the Family Medical Leave Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Paid Leave Law, the Unruh Act, the Ralph Act, the Americans with Disabilities Act, the National Labor Relations Act, the Employee Retirement Income Security Act of 1974, all claims for constructive discharge, wrongful discharge, wrongful termination and violation of public policy, assault, battery, harassment, discrimination, retaliation, negligent hiring and supervision, libel, slander, defamation, intentional and negligent infliction of emotional distress, invasion of privacy, misappropriation of likeness, and breach of the covenant of good faith and fair dealing; all statements or actions of TOYOTA Releasees; claims for breach of contract, intentional interference with contract, fraud, deceit and negligent misrepresentation; all claims for relief for other benefits under any federal, state or local statute, ordinance, regulation or rule of decision; violations of Labor Code Sections 132A, 226, 2699, and 2802, all claims asserted or that could have been asserted against TOYOTA, all class action claims asserted or that could have been

asserted against TOYOTA, all claims for severance pay, back pay, front pay, wage and hour claims, overtime compensation, meal and rest breaks and any and all other California Labor Code violations, attorneys' fees, liquidated damages, punitive damages, penalties, interest, costs, expense reimbursements and disbursements.

5. **Release of TOYOTA's Claims.** TOYOTA hereby waives and releases all existing rights to relief of any kind as to MITSCH, her heirs, successors, assigns, attorneys, or agents (herein MITSCH Releasees), related in any way to the services provided by and/or the employment of MITSCH.

6. **Covenant Not to Sue.** The Parties hereby covenant not to sue, and waive and release all existing rights to any relief of any kind from the other Party, including without limitation, all claims, demands, criminal liability, civil liability, obligations, causes, and causes of action of whatever kind or nature, whether known or unknown, past or present, suspected or unsuspected. The Parties agree that they will not in the future file any other claim, lawsuit or grievance, or assert any criminal complaints with any agency against the other Party asserting or alleging any claims related to, based upon, or arising out of any actual or alleged contractual, employment or other relationship between MITSCH and TOYOTA as the date of this Agreement. This Covenant does not apply to any claim for breach of the terms of this Agreement. If either Party breaches the covenant not to sue described in this Section, they agree to indemnify, hold harmless and reimburse the other Party for attorneys' fees, costs and damages incurred in defending such action.

7. **Waiver of California Civil Code Section 1542.** The Parties acknowledge and agree that they have been provided with the opportunity to review this Agreement with counsel,

and expressly waive and relinquish the rights created under California Civil Code section 1542, which provides:

§1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or his favor at the time of executing the release, which if known by him or his must have materially affected his or his settlement with the debtor.

The Parties understand and acknowledge that a risk exists that they incurred or suffered or may incur or suffer loss or damages as a result of the matters, events, occurrences, transactions, causes and things referred to in this Agreement which were unknown, unsuspected or unanticipated at the time this Agreement was executed. Each Party hereby expressly assumes this risk.

8. **Warranties.** MITSCH acknowledges that, apart from the ACTION, he has not filed any other complaints, claims, or actions against TOYOTA, including its employees, agents, attorneys, successors, assigns and insurers with any state, federal, or local agency. MITSCH represents and warrants that there are no pending claims, lawsuits, grievances or charges that he has filed against TOYOTA other than the ACTION described hereinabove in Section A.

9. **Confidentiality.** MITSCH and TOYOTA understand and agree that this Agreement and each of its terms are confidential and shall not be disclosed by the Parties to any entity or person (other than MITSCH's spouse and either Party's directors, officers, tax or legal advisors, the Superior Court, and the Arbitrator), for any reason, at any time, without the prior written consent of the other Party, unless required by law. The Parties further acknowledge and agree this Section expressly applies to communication with TOYOTA's current and former employees or current, former and prospective clients, and that MITSCH shall not hereafter contact or communicate with TOYOTA's employees or former employees, or current, former

and prospective clients, regarding this Agreement, its terms, or the negotiations surrounding it. If any Party to this Agreement is served with a demand or request to produce this Agreement, or the information contained herein (whether expressly or otherwise), such Party shall give written notice to the other Party. Such notice shall be given within ten (10) days of the receipt of such disclosure demand or request, unless ten (10) days' notice would not permit sufficient time in which to allow the other Party to assert any interest in prohibiting the requested disclosure. In such case, the Party requested to make the disclosure shall give written notice to the other Party as soon as possible.

10. **Non-Disparagement and Confidential Information.** MITSCH shall not disparage, defame, or besmirch the reputation, character, image, mission or services of the TOYOTA and its current and former officers, directors, employees, agents, lawyers, assigns, insurers, shareholders, affiliates, divisions, subsidiaries, predecessors and successor corporations. TOYOTA shall not disparage, defame, or besmirch the reputation, character, image, mission or services of MITSCH. Testimony under oath shall not constitute disparagement.

11. **Claims Involving Parties.** MITSCH will not encourage or assist with the prosecution of claims or lawsuits against TOYOTA, and its current and former officers, directors, employees, agents, attorneys, shareholders, affiliates, divisions, subsidiaries, predecessors and successor corporations, assigns and insurers except as required by law.

12. **No Admission of Wrongdoing.** The Agreement does not constitute an admission that TOYOTA violated any local, state or federal ordinance, penal code, regulation, ruling, statute, rule of decision or principal of common law, or that TOYOTA engaged in any improper, unlawful or criminal conduct or wrongdoing. MITSCH shall not characterize the Agreement or

the provision of any consideration stated herein as an admission or indication that TOYOTA engaged in any improper, harassing, unlawful or criminal conduct.

13. **Understanding.** MITSCH acknowledges he has had the opportunity to consult with an attorney prior to executing the Agreement. MITSCH acknowledges he has had a full opportunity to consider the Agreement, ask any questions that he may have concerning the terms of the Agreement and that, in deciding to execute the Agreement, he has not relied on any statements made by TOYOTA, or counsel, other than the statements in the Agreement. MITSCH further acknowledges he has read and understands the contents of the Agreement and that he executes the Agreement knowingly, voluntarily, without any coercion or duress, and with the opportunity to obtain independent legal advice of his own choice.

14. **Authority.** The Parties represent and warrant that they have the authority to enter into this Agreement, and that they have not assigned any CLAIMS to any person or entity.

15. **Reapplication For Employment.** TOYOTA is entitled to reject, without cause, any application for employment with TOYOTA made by MITSCH.

16. **Invalidity.** In the event a court of competent jurisdiction determines that any Section of the Agreement is invalid, illegal or unenforceable in any respect, such a determination will not affect the validity, legality or enforceability of the remaining provisions of the Agreement and said remaining provisions shall continue to be valid and enforceable.

17. **Successors and Assigns.** The Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, representatives, successors and assigns.

18. **Entire Agreement.** The Agreement represents the entire agreement of the Parties with respect to the subject matter set forth herein, and that all agreements and understandings between the Parties concerning the subject matter of this Agreement are embodied and expressed

in this Agreement. This Agreement shall supersede all prior or contemporaneous agreements and understandings among MITSCH and TOYOTA, whether written or oral, express or implied, with respect to the employment, termination, and benefits of MITSCH, including without limitation, any employment-related agreement. The Parties represent and warrant that no party has made any representations, warranties, inducements or oral agreements except as expressly set forth herein. The Parties may not change, modify or rescind the Agreement except in a writing signed by all Parties. Any attempt at oral modification of the Agreement shall be void and of no effect.

19. **Attorneys' Fees.** If an action is brought by any of the Parties for breach of any provision of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, costs, and expenses incurred in defending or bringing such an action.

20. **Headings.** The descriptive headings of the Sections and Sub-Sections of the Release are intended for convenience only, and do not constitute parts of the Agreement.

21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the Parties at such time as all the signatories hereto have signed a counterpart of this Agreement. All counterparts so executed shall constitute one Agreement binding on all the parties hereto, notwithstanding that all of the Parties are not signatory to the same counterpart. MITSCH agrees to produce his original signature to TOYOTA within ten (10) days of his execution of this Agreement.

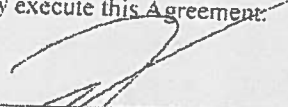
22. **Governing Law, Interpretation, and Enforcement.** The Agreement will be construed in accordance with, and any dispute or controversy arising from any breach or asserted breach of the Agreement will be governed by, the laws of the State of California. The Agreement

shall be deemed to have been jointly drafted by the Parties and, therefore, any ambiguity shall not be interpreted in favor of one party to the detriment of the other. The Parties agree that for purposes of enforcement in court of any legal proceeding, or as an affirmative defense, this Agreement may be disclosed and admitted into evidence.

23. Third Party Inquiries Regarding MITSCH's Employment. TOYOTA agrees that on each occasion whereby an individual contacts TOYOTA to obtain information regarding MITSCH and/or his employment, TOYOTA shall respond to that contact by only confirming MITSCH's dates of employment and positions held at TOYOTA.

IN WITNESS WHEREOF, the undersigned do hereby execute this Agreement.

Dated: 7-19, 2017



MICHAEL MITSCH
Plaintiff, an individual

Dated: 7/26, 2017



By: Marshall Gordon
Title:
For: TOYOTA OF RIVERSIDE,
Defendant

APPROVED AS TO FORM AND CONTENT:

By: 

David Myers, Esq. / Ann Hendrix
The Myers Law Group
Attorneys for Plaintiff
MICHAEL MITSCH

1 Michael Mitsch v. Toyota of Riverside
2 RSC Case No. RIC1312716

3 **PROOF OF SERVICE**

4 I am employed in the office of a member of the bar of this Court at whose direction this
5 service was made. I am over the age of 18 and not a party to the within action; my business
6 address is 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, California 91730.

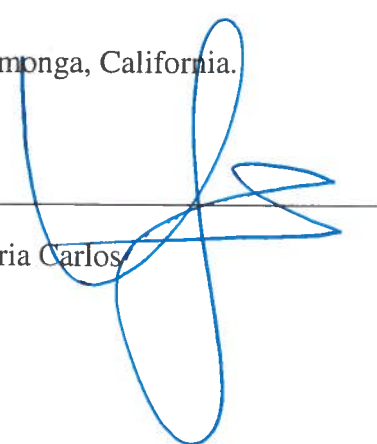
7 On August 2, 2017, I served the foregoing document described as **DECLARATION OF**
8 **ANN HENDRIX IN SUPPORT OF JOINT NOTICE OF MOTION AND MOTION FOR**
9 **APPROVAL OF PAGA SETTLEMENT AND DISMISSAL OF ACTION** by serving
10 interested parties in this action by placing a true copy thereof in a sealed envelope, postage
11 prepaid, addressed as follows:

12 Thomas J. McNamara, Esq.
13 Tim M. Agajanian, Esq.
14 **Ropers, Majeski, Kohn & Bentley**
15 445 South Figueroa St., Suite 3000
16 Los Angeles, CA 90071

17 I am "readily familiar" with the firm's practice of services of process. Under that
18 practice, this document would be deposited with U.S. Postal Service on that same day with
19 postage thereon fully prepaid in the ordinary course of business.

20 I declare under the penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on August 2, 2017 at Rancho Cucamonga, California.

23 
24 Warquiria Carlos
25
26
27
28