

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

Plaintiff BLAKE MILIATE (“Plaintiff” or “Class Representative”), on behalf of himself and all others similarly situated, and Defendant SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN DIEGO HOUSE OF MOTORCYCLES, INC. (“SDHM” or “Defendant”), hereby enter into this Settlement Agreement and Release (“Settlement Agreement”), subject to the approval of the Court. Plaintiff and SDHM may often collectively be referred to herein as the “Parties” and individually as a “Party”. The Parties, in consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, stipulate and agree as follows:

### **I. RECITALS**

**WHEREAS**, on July 13, 2018, Plaintiff filed his original class action Complaint in this matter in the San Diego County Superior Court, captioned *Blake Miliate v. San Diego House of Motorcycles, Inc. dba North Countys House of Motorcycles, et al.*, SDSC Case No. 37-2018-00035131-CU-BT-CTL (the “Action”), alleging that Defendant engaged in conduct that violated the provisions of the Rees-Levering Motor Vehicle Sales Finance Act (“Rees-Levering Act”), asserting various causes of action against Defendant arising out of his purchase of two motorcycles from SDHM: (1) his purchase of a Honda motorcycle in July 2017, wherein he utilized a new Citibank issued Honda program credit card to purchase the Honda motorcycle (the “Citibank Transaction”); and (2) his purchase of a Yamaha motorcycle in February 2018, wherein he utilized a new Yamaha Motors Finance Corp./WebBank credit card to purchase the Yamaha (the “YMFC Transaction”).

**WHEREAS**, during the pendency of the action, San Diego House of Motorcycles, Inc. converted its name and entity type to San Diego House of Motorcycles, LLC.

**WHEREAS**, thereafter, the Action was stayed pending the completion of the arbitration of Plaintiff’s individual claim involving the YMFC Transaction.

**WHEREAS**, on July 7, 2022, the Arbitrator in JAMS Arbitration Case No. 1240023856 issued the Final Arbitration Award in Plaintiff’s favor with respect to his individual claim

involving the YMFC Transaction.

**WHEREAS**, on April 6, 2023, the JAMS Arbitration Appellate Panel in Appellate Case No. 12400025244 reversed the Arbitrator's Final Arbitration Award and issued its final opinion in favor of SDHM (the "Appellate Arbitration Award").

**WHEREAS**, on August 18, 2023, the Superior Court granted SDHM's Petition to Confirm the Appellate Arbitration Award in the Action.

**WHEREAS**, on October 19, 2023, Plaintiff filed his operative First Amended Complaint (the "FAC") in the Action, asserting one cause of action against SDHM for Violation of Business and Professions Code §§ 17200, *et seq.*, claiming violations of the Rees-Levering Act by SDHM relative to SDHM's sale of motorcycles financed by open-ended credit cards allegedly arranged by SDHM;

**WHEREAS**, Plaintiff and SDHM recognize that the outcome of the Action is uncertain, and that pursuing the Action to judgment would entail significant cost, risk, and delay;

**WHEREAS**, the Parties have explored and discussed at length the factual and legal issues in the Action and have participated in a mediation session with Michael Ornstil of JAMS. Prior to and during mediation, the Parties extensively negotiated resolution for the Class;

**WHEREAS**, only after resolution of all terms concerning the Class did the Parties negotiate Plaintiff's service award and attorneys' fees and costs;

**WHEREAS**, the Parties recognize that the settlement of this Action presented herein is subject to Court approval;

**WHEREAS**, the Parties desire to compromise and settle all issues, claims, and/or facts asserted in the Action or that could have been reasonably asserted based upon the facts alleged in the Action by Plaintiff on his own behalf and on behalf of members of the Class, including all claims addressed in Plaintiff's operative FAC;

**WHEREAS**, Plaintiff, by and through Class Counsel, has: (a) made a thorough investigation of the facts and circumstances surrounding the allegations asserted in the Action; (b) engaged in investigation of the claims asserted, and (c) evaluated and considered the law

applicable to the claims asserted in the Action, including the defenses that SDHM asserted and likely would assert;

**WHEREAS**, SDHM, by and through its counsel, has denied and continues to deny any and all claims alleged by Plaintiff, and has denied and continues to deny that its past or current conduct violates any law or that it is legally liable to Plaintiff or any Class Member for any of the matters asserted in this Action, but has concluded that settlement is desirable to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of Plaintiff and all Class Members relating to claims which were or could have been asserted by Plaintiff and the Class in this Action relating to the alleged conduct at issue;

**WHEREAS**, Plaintiff's counsel are experienced in this type of class litigation, recognize the costs and risks of prosecution of this Action, and believe that it is in Plaintiff's interest, and the interest of all Class Members, to resolve this Action, and any and all claims against SDHM arising from the conduct alleged in the Action, and that the proposed settlement is fair, adequate, and reasonable, and provides significant benefits and is in the best interests of the Class;

**WHEREAS**, significant arm's length settlement negotiations have taken place between the Parties and, as a result, this Settlement Agreement has been reached in good faith by the Parties, without collusion, and subject to the Court approval process set forth herein;

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

## **II. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

2.1. "**Action**" shall mean the case captioned *Blake Miliate v. San Diego House of Motorcycles, Inc. dba North Countys House of Motorcycles, et al.*, San Diego County Superior

Court, Case No. 37-2018-00035131-CU-BT-CTL, pending in the San Diego County Superior Court, and the claims asserted therein.

2.2. **“SDHM”** shall mean San Diego House of Motorcycles, LLC fka San Diego House of Motorcycles, Inc., the Defendant in the Action.

2.3. **“Class”** shall mean:

- (a) all California consumers who purchased motor vehicles from SDHM;
- (b) for which SDHM arranged or assisted the consumer with financing for the purchase of the motor vehicle through a lender issuing a credit card;
- (c) and for which SDHM listed the lender issuing the credit card as the **“LIENHOLDER OR LEGAL OWNER”** on an Application for Registration of New Vehicle or **“NEW LIENHOLDER”** on an Application for Transfer by New Owner that SDHM sent to the California DMV; and
- (d) from July 13, 2014 (four years prior to the filing of the original complaint) to December 31, 2023.

Excluded from this class are (a) all persons whose claims are subject to an agreement to arbitrate and (b) all persons whose purchase transactions with SDHM were financed through the Yamaha/WebBank credit card program.

2.4. **“Class Administrator”** shall mean Apex Class Action LLC.

2.5. **“Class Counsel”** shall mean Kemnitzer, Barron & Krieg, LLP.

2.6. **“Class Counsels’ Fees and Expenses”** shall mean Class Counsel’s reasonable attorneys’ fees and expenses, as set forth herein, subject to approval of the Court.

2.7. **“Class Members”** shall have the same meaning as **“Class.”**

2.8. **“Class Action Notice”** shall mean the notice that is to be approved by the Court and mailed to the Class as directed upon preliminary approval of this settlement.

2.9. **“Class Representative”** shall mean Plaintiff Blake Miliate.

2.10. “**Court**” shall mean the Superior Court of San Diego County, Hon. Carolyn Caietti, Dept. C-70, or such other judge as may be assigned to hear matters in the Action.

2.11. “**Defendant**” shall mean SDHM, as defined above.

2.12. “**Defendant’s Counsel**” shall mean Chapman Glucksman.

2.13. “**Effective Date**” shall mean the date the Court’s Order approving the settlement and judgment thereon (“**Judgment**”) becomes final. For purposes of the Settlement Agreement, the Court’s Judgment “becomes final” upon the later of:

(1) Sixty (60) days after entry by the Court of a final approval Order and Judgment finally certifying the Settlement Class and approving the Settlement if no notice of appeal, writ petition, or other appellate proceedings are filed with that time; or

(2) if any appeal, writ petition, or other appellate proceeding has been filed, five (5) business days after any appeal, writ petition, or other appellate proceedings challenging the Stipulation of Settlement have been finally and conclusively dismissed with the Judgment being affirmed.

2.14. “**Final Approval Hearing**” shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order and/or Final Approval Order on Fees.

2.15. “**Final Approval Order**” shall mean the order of the Court that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement, which include approving payment of Service Award and Class Counsels’ Fees and Expenses, in substantially similar form to the proposed order attached hereto as **Exhibit C**.

2.16. “**Final Approval Order on Fees**” shall mean any order of the Court awarding Class Counsels’ Fees and Expenses (or any amount less than Class Counsels’ Fees and Expenses).

2.17. “**Notice Procedure**” shall mean the process to be followed per Article VII.

2.18. “**Objection Date**” shall mean sixty (60) days from the date of the mailing of the Settlement Notice, or as otherwise ordered by the Court, for Class Members to object to the Settlement Agreement’s terms or Class Counsels’ Fees and Expenses, and to submit any required statements, proof, or other materials and/or argument.

2.19. “**Operative Complaint**” means the First Amended Complaint filed by Plaintiff on October 19, 2023.

2.20. “**Parties**” shall mean the Plaintiff and Defendant.

2.21. “**Plaintiff**” shall mean Blake Miliate, the Class Representative as defined above.

2.22. “**Preliminary Approval Motion**” shall mean the motion filed by Plaintiff seeking preliminary approval from the Court of this Settlement Agreement.

2.23. “**Preliminary Approval Order**” shall mean the order of the Court preliminarily approving this Settlement Agreement in substantially similar form to the proposed order attached hereto as **Exhibit A**.

2.24. “**Released Claims**” refers to the claims released by this Settlement Agreement, as set forth in Article XIII.

2.25. “**Released Parties**” shall mean SDHM, its parent entities, and their respective past, present and future affiliates, officers, directors, shareholders, employees, agents, contractors, representatives, subsidiaries, related entities, vehicle manufacturers, predecessors and successors in interests, agents, employees, insurers, reinsurers, attorneys, owners, predecessors, successors and assigns.

2.26. “**Residual**” shall mean any uncashed Settlement Benefit checks distributed to the Class Members.

2.27. “**Service Award**” shall mean the amount to be paid to the Class Representative to compensate him for his time and efforts on behalf of the Class, subject to approval of the Court.

2.28. “**Settlement**” and “**Settlement Agreement**” shall mean the agreement by the Parties to resolve this Action, the terms of which have been memorialized herein.

2.29. “**Settlement Benefit**” shall mean the monetary consideration to be distributed to the Class Members.

2.30. “**Settlement Funds**” shall mean the total settlement amount as set forth in Section IV.

2.31. “**Settlement Notice**” shall mean the Notice of Proposed Class Action Settlement in the form approved by the Court following the Preliminary Approval Motion in the form attached hereto as **Exhibit B**.

### III. PRELIMINARY APPROVAL OF SETTLEMENT

3.1. Preliminary Approval Motion. Promptly upon execution of this Settlement Agreement, Plaintiff, acting as Class Representative, through Class Counsel, shall file a Preliminary Approval Motion. The Preliminary Approval Motion shall request that this Court enter a Preliminary Approval Order:

- a. Certifying a Class for the purpose of effectuating this Settlement;
- b. Appointing Plaintiff as Class Representative;
- c. Appointing Class Counsel as counsel for the Class;
- d. Granting preliminary approval to this Settlement by order substantially in the form attached as **Exhibit A** (the Preliminary Approval Order);
- e. Approving a Notice of Class Action Settlement substantially in the form attached hereto as **Exhibit B**; a Spanish-language version of Exhibit B will be prepared by the Class Administrator;
- f. Approving the Class Administrator and settlement procedures;
- g. Setting the time date and place of the final approval hearing; and
- h. Any other matters deemed necessary for settlement of the Action.

3.2. Corporate Declarations. Within ten (10) days of execution of this Settlement Agreement, SDHM shall provide Class Counsel, for filing with the Court, a declaration from a SDHM designated representative stating the total number of Class Members and the total amount of money that Class Members financed using open-ended financing.

3.3. Best Efforts to Obtain Approval of Settlement. In the event that the Court declines to issue the Preliminary Approval Order or declines to issue the Final Approval Order, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court, including but not limited to returning to mediation. If, despite their best

efforts, the Parties cannot cure said defects, the Settlement Agreement is voidable with each Party returning to their respective pre-settlement posture and without prejudice or waiver to any Party's pre-settlement position on any legal or factual issue.

The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

3.4. Compliance With Rules of Court. The Parties acknowledge that Court approval of Settlement shall be undertaken in accordance with Rule 3.769 of the California Rules of Court.

#### **IV. SETTLEMENT FUNDS**

4.1. The Parties agree that the total settlement amounts are set forth in 4.1.a-c. below as full and final monetary consideration for resolution of the Action (the "Settlement Funds"). The Settlement Funds shall be deposited with the Class Administrator within twenty-one (21) days after the Effective Date, and shall be distributed as follows, subject to the approval and direction of the Court:

- a. Settlement Benefit: Two Hundred Thousand Six Hundred and Forty-Seven Dollars and Fifty-Nine Cents (\$200,647.94) shall be distributed to Class Members (the "Settlement Benefit"). The amount paid to each Class Member shall be calculated based on the pro-rata amount of money the Class Member financed using open-end financing, and payment shall be made in the form of a check that must be cashed within one hundred eighty (180) days from the date of issuance, as stated on the face of the check.
- b. Attorneys' Fees and Costs: SDHM will not oppose a request of Two Hundred Thousand Dollars (\$200,000.00) in total for Class Counsel's Fees and Expenses. SDHM shall pay the attorneys' fees and litigation expenses awarded by the Court to Class Counsel, so



long as they are consistent with the terms set forth herein and do not exceed \$200,000.00. Such attorneys' fees and litigation expenses shall be paid in the amount approved by the Court within twenty-one (21) days of the later of: (a) the Effective Date; (b) the date the Court enters its order awarding such attorneys' fees and litigation expenses; or (c) the date on which Class Counsel provides SDHM with all information and documentation reasonably necessary for SDHM to process the payment, including but not limited to wire or other payment instructions, tax identification number(s), and completed Form(s) W-9. Class Counsel's Fees and Expenses shall be distributed among Class Counsel based upon their mutual agreement.

- c. Service Award: The sum of Three Thousand Five Hundred (\$3,500.00) (or such other amount as may be determined by the Court to be fair and reasonable) shall be paid to Plaintiff as the Service Award. SDHM shall pay the Court approved Service Award and send a check for the full amount to Class Counsel within twenty-one (21) days of the later of: (a) the Effective Date, or (b) the date on which the Court approves the Service Enhancement, and (c) the date on which the Settlement Class Representative and/or Class Counsel provided SDHM with all information and documentation reasonably necessary for SDHM to process the payment, including but not limited to tax identification number, and a completed Form W-9.
- d. No Reversion; Unclaimed Property: SDHM will receive no reversion from the Settlement Benefit. The proceeds of any uncashed checks after 180 days following the issuance of settlement checks will be sent in the corresponding Class Member's name to the California State Controller's Office's Unclaimed Property Fund. Class Administrator will be responsible for submitting the necessary paperwork to the California State Controller's Office - Unclaimed Property Fund. Class Administrator will continue to hold these unclaimed funds until such time it is required to transfer said funds to the State Controller's Office.

## **V. NO ADMISSION OF LIABILITY OR FAULT**

5.1. This Settlement Agreement is not to be used in evidence or for any other purpose in any other proceeding, and shall not at any time be construed or deemed to be any admission or concession by SDHM with respect to any alleged liability, fault, omission or wrongdoing of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order and Judgment as contemplated herein. SDHM specifically denies the allegations of wrongdoing made in connection with the Action, and denies that its alleged conduct violated any State or Federal law. SDHM maintains that it has meritorious defenses to all claims alleged in the Action and enters into this Agreement subject to and without waiving any personal jurisdiction defenses asserted in the Action. Neither the Settlement nor any of the terms of this Agreement shall constitute an admission or finding of any fault, liability, wrongdoing, or damage whatsoever or any infirmity in the defenses that SDHM has, or could have, asserted. SDHM is entering into this Agreement solely to eliminate the burden and expense of further litigation. SDHM has determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement. This provision shall survive the expiration or voiding of the Settlement Agreement.

## **VI. OBLIGATION OF CLASS ADMINISTRATOR**

6.1. SDHM shall retain the Class Administrator and shall pay for the costs and expenses of the Class Administrator. The Class Administrator shall be responsible for all of the following:

- a. Preparing, printing, and disseminating to the Class Members the Settlement Notice and otherwise administering the settlement;
- b. Keeping track of opt-outs and objections to the Settlement, including maintaining the original mailing envelope in which they were mailed, and within seven (7) business days after the close of the Objection Date, informing Class Counsel and Defendant's Counsel in writing of the total number of such opt-outs and objections received in response to the Settlement Notice and forwarding information about all opt-outs and all objections and, supporting papers to Class Counsel and Defendant's Counsel;

- c. Holding settlement funds and preparing and mailing checks in accordance with this Agreement and direction of the Court;
- d. Ascertaining the current address, telephone number, and addressee information for each Class Member prior to disseminating the Settlement Notice in the manner and under the circumstances described in Article VII;
- e. Remitting unclaimed funds to the State Controller's Unclaimed Property Fund and performing all reporting duties associated therewith;
- f. Performing any tax reporting duties required by federal, state, or local law;
- g. Referring to Class Counsel and Defendant's Counsel all inquiries by the Class regarding matters not specified herein;
- h. Maintaining adequate records of all its activities, including the dates of each mailing of Class Notices, returned mail, and other communications and attempted written or electronic communications with the Class;
- i. Confirming in writing its completion of the administration of the settlement;
- j. Preparing a final report summarizing the objections and disputes filed;
- k. Settlement Website. No later than ten (10) business days after entry of the Preliminary Approval Order, the Class Administrator will create and operate a publicly accessible website solely for the purposes of providing notice to the Class Members. The settlement website will contain a copy of the Settlement Notice in English and Spanish, "Frequently Asked Questions" regarding the Settlement Agreement and approval process, the Operative Complaint, the Preliminary Approval Order, and other documents agreed upon by the Parties. The Parties will jointly provide the Class Administrator with the content required for the settlement website. Additionally, any change of the date, time, or location of the Final Approval Hearing will be posted on the website.
- l. Sixteen (16) court days prior to the Final Approval Hearing, filing a declaration with the Court informing the Court of Class Members who objected to the Settlement and/or

plan on attending the Final Approval Hearing, along with a copy of the objection to the settlement, and/or plan to attend and attesting to the measures undertaken to provide the Settlement Notice to the Class Members; and

- m. Such other tasks as the Class Counsel and Defendant's Counsel mutually agree, or as required by the Court.

## **VII. NOTICE OF SETTLEMENT**

7.1. Initial Mailing. Within thirty (30) days after the Court's entry of the Preliminary Approval Order, or on such other time as may be directed by the Court, the Class Administrator shall mail the Settlement Notice by first class mail to Class Members via a single mailing (rather than on a rolling basis).

7.2. Re-Mailing if Postal Service Provides Additional Address Information. If any Settlement Notices are returned to the Class Administrator within thirty (30) days following the initial date of mailing the Settlement Notice, they will be re-mailed within five (5) days of receipt if additional address information is provided by the Postal Service.

7.3. Re-Mailing if Postal Service Does Not Provide Additional Address Information. If any Settlement Notice comes back undeliverable within thirty (30) days following the initial date of mailing the Settlement Notice, and no additional address information is provided by the Postal Service, the Class Administrator shall run the Class Member's name, last known address, and social security number, if available, through the LexisNexis best address search and, within five (5) days, re-mail the notice if an updated address can be found. If the LexisNexis search does not show an updated address for the Class Member, the Settlement Notice will not be re-mailed. Settlement Notices that are returned as undeliverable following the LexisNexis search will not be re-mailed again.

## **VIII. OPT OUT AND OBJECTIONS BY CLASS MEMBERS**

8.1. The Parties will also request that the Court enter a Preliminary Approval Order requiring any Class Member who wishes to exclude ("opt out") him or herself from this Action and from this Settlement to submit a written request to the Class Administrator, including full

name and address, the name of the lawsuit captioned *Blake Miliate v. San Diego House of Motorcycles, Inc. dba North Countys House of Motorcycles, et al.*, San Diego County Superior Court, Case No. 37-2018-00035131-CU-BT-CTL and request to be excluded from the Class in this Action (a "Request for Exclusion"). Said Request for Exclusion shall be made within sixty (60) days from the date of the mailing of the Settlement Notice, or as otherwise ordered by the Court.

8.2. The Parties will also request that the Court enter a Preliminary Approval Order requiring any Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes any objection to be considered, to provide to the Class Administrator a written objection, by the Objection Date. To state a valid objection to the Settlement, an objecting Class Member must provide to the Class Administrator the following information in his or her written objection: (i) the name of the lawsuit, captioned *Blake Miliate v. San Diego House of Motorcycles, Inc. dba North Countys House of Motorcycles, et al.*, San Diego County Superior Court, Case No. 37-2018-00035131-CU-BT-CTL; (ii) full name, current address, and current telephone number; (iii) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (iv) provide copies of any other documents that the objector wishes to submit in support of his/her position; and (v) the objector's signature and the date of the signature. The Class Member shall also state in the objection whether the Class Member intends to attend the Final Approval Hearing. Within seven (7) business days after the close of the Objection Date, the Class Administrator shall provide a copy of all objections and supporting papers to Class Counsel and Defendant's Counsel, and Class Administrator shall file any objections and supporting papers with the Court no later than sixteen (16) days prior to the Final Approval Hearing.

8.3. Subject to approval of the Court, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to (a) show cause why the Settlement should not be approved as fair, adequate, and reasonable, or (b) object to any petitions for Class Counsels' Fees and Expenses, and Service Award.

8.4. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with the due process rights of all Class Members.

#### **IX. FINAL APPROVAL**

9.1. The Parties shall request a date for the Final Approval Hearing at the time of the hearing for Preliminary Approval. At least sixteen (16) court days before the Final Approval Hearing, Class Counsel shall file a motion for final approval of the Settlement, for an award of Class Counsels' Fees and Expenses, and for a Service Award to the Class Representative. The motion will request the Court grant Final Approval of the Settlement and to enter a final judgment in accordance with this Agreement, including approving this Agreement as final, fair, reasonable, adequate, and binding on the Class, awarding Class Counsels' Fees and Expenses, awarding the Service Award, and approving the plan for distribution of Residual funds, if any, to the State Controller's Unclaimed Property Fund. To the extent it is to be filed as an unopposed motion, it will be sent to Defendant's Counsel for approval within five (5) business days of filing for review and consent.

9.2. SDHM may, at its discretion, withdraw or terminate the Settlement Agreement prior to the Final Approval Hearing if more than two percent (2 %) of Class Members submit valid and timely Requests for Exclusion. SDHM shall have five (5) business days following the delivery by the Class Administrator to Defendant's Counsel and Class Counsel a complete report listing all valid Requests for Exclusion to exercise this option. If SDHM exercises this option and withdraws from the Settlement Agreement in accordance with the terms of this Paragraph, the Settlement Agreement shall become null and void and of no further force and effect, and the Parties will be restored to their positions prior to their execution of the Settlement Agreement. In the event exercises this option, SDHM will remain responsible for the Settlement Administrator's expenses incurred.

## X. CLASS DATA

10.1. After diligent investigation of its records, SDHM affirms that there are 712 members of the Class, whose total amount of money financed using open-ended financing was \$6,688,264.59.

## XI. DISTRIBUTION OF SETTLEMENT FUNDS TO CLASS MEMBERS

11.1. Records Search. SDHM shall determine by diligent investigation from its records, for each Class Member, the last known addresses of each Class Member and the amount of money the Class Member financed using open-ended financing. SDHM shall transmit this information to the Class Administrator, which shall be maintained in confidence.

11.2. Settlement Benefit Transfer. Ten (10) business days after the Effective Date of Settlement Benefits, SDHM agrees that it or its representative shall electronically transfer to an account held by the Class Administrator the full amount of the Settlement Benefit as set forth in Section 4.1.a.

11.3. Settlement Benefit Distribution. On the Distribution Date, Class Administrator shall issue settlement checks to Class Members on a pro-rata basis based on the amount of money the Class Member financed to purchase a motor vehicle from SDHM using open-ended credit financing allegedly arranged by SDHM (the "Class Member Payment"). The Class Member Payment checks shall become stale one hundred eighty (180) days following issuance.

11.4. Uncashed Settlement Checks. The funds from the uncashed Class Member Payment checks shall be distributed by the Class Administrator to the State Controller's Unclaimed Property Fund. No later than ten (10) calendar days after the requisite waiting period after the check-cashing deadline, the Settlement Administrator shall deposit the total amounts contained in the uncashed Class Member Payment checks, and all interest that has accrued, to the State Controller's Unclaimed Property Fund. The Settlement Administrator shall provide a declaration of deposit with the State Controller's Unclaimed Property Fund, which will be served on the Parties' counsel within ten (10) calendar days of payment of the Residual.

11.5. Dispute Resolution. Any disputes regarding payments to the Class, such as a dispute about a payment amount or the proper recipient of a Class Member Payment, will be resolved in the following manner: (1) Class Counsel and Defendant's Counsel will first meet and confer in a good faith attempt to resolve the dispute; and (2) in the event the dispute cannot be resolved informally between Class Counsel and Defendant's Counsel, the Parties will submit the dispute to the Court for a binding determination.

## **XII. TAX TREATMENT**

12.1. The Parties make no representations as to the tax treatment or legal effect of the payments called for or amounts required to be reported under the terms of this Agreement and/or the Settlement.

## **XIII. RELEASE AND JURISDICTION OF COURT**

13.1. Release by Class Members: All Class Members hereby release any and all claims, liens, demands, actions, and causes of action of any nature that they have, had or may have against SDHM and Released Parties, arising out of the allegations of the Action, and hereby expressly waive and relinquish any and all claims they may have arising out of the allegations of the Action.

13.2. Releases by Class Representative. The Class Representative hereby releases any and all claims, liens, demands, actions, and causes of action of any nature which he has, had, or may have against SDHM and Released Parties. This release is intended to be a general one covering all existing claims or demands of any nature whatsoever. The Parties expressly understand and acknowledge that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Parties explicitly took that possibility into account in entering into this Agreement. A portion of the consideration has been bargained for between the Parties to this Agreement with the knowledge of the possibility of such unknown losses or claims and was given in exchange for a full accord, satisfaction, and discharge of all such losses or claims.

13.3. Plaintiff and the Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless



agree that, upon entry of the Final Approval Order and accompanying Judgment, Plaintiff and the Class Members fully, finally, and forever settle and release any and all of the Released Claims. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

13.4. Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members; (ii) SDHM and Released Parties shall not be subject to liability or expense of any kind to any Class Member(s) for reasons related to the Action except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all of the Released Claims against Defendant and Released Parties.

13.5. Without affecting the finality of the Final Approval Order or Final Judgment in any way, the Court shall retain jurisdiction over:

- a. any other action necessary to implement the terms of the Final Approval Order and/or this Agreement; and
- b. the construction, interpretation, implementation, and enforcement of the Final Approval Order, until each and every act agreed to be performed by the Parties thereunder has in fact been fully performed.

**XIV. ADMINISTRATION, ATTORNEYS' FEES, AND SERVICE AWARDS**

14.1. All expenses incurred in administering this Settlement Agreement, including, without limitation, the cost of the Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, shall be paid as described herein, subject to approval of the Court.

14.2. Subject to approval by the Court and pursuant to Section 6.1, SDHM shall retain the Class Administrator and shall pay for the costs and expenses of the Class Administrator.

14.3. Subject to approval by the Court, the Parties agree that Class Counsel may request that Class Counsel be paid attorneys' fees and costs awarded by the Court up to an amount that does not exceed Two Hundred Thousand Dollars (\$200,000.00). Class Counsel agrees that they

shall not be entitled to and will not seek – either from SDHM or from any other party, person, or entity – attorneys’ fees and costs or other compensation for attorneys’ services and expenses in the Action exceeding the amount stated above, subject to Court approval. Class Counsel agrees that such an award shall compensate them for all legal work in the Action up to and including the date of the Final Judgment, as well as for all legal work and costs that may be incurred in the Action after the date of the Final Judgment. A single check payable to “Kemnitzer, Barron & Krieg LLP”, for such fees and costs as approved by the Court, will be issued pursuant to the terms of 4.1.b above.

14.4. The Parties agree that Class Counsel may apply to the Court for the payment of a Service Award to the Class Representative Blake Miliate that does not exceed Three Thousand Five Hundred Dollars (\$3,500.00). The Service Award shall be made in the form of a check to the Class Representative, and issued pursuant to the terms of 4.1.c above.

#### **XV. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

15.1. Class Representative Blake Miliate and Class Counsel, who are signatories hereto, represent and warrant that they have the authority, on behalf of Plaintiff and the Class, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiff and constitutes their legal, valid, and binding obligation.

15.2. SDHM represents, and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by SDHM of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of SDHM. This Settlement Agreement has been duly and validly executed and delivered by SDHM and constitutes its legal, valid, and binding obligation.

#### **XVI. MISCELLANEOUS PROVISIONS**

16.1. Each Party is Represented by Counsel. The Parties acknowledge to each other that each has been advised and is represented by legal counsel of their own choice throughout all of

the negotiations which preceded the execution of this Settlement Agreement and that they have executed this Settlement Agreement after being so advised and without reliance upon any promise or representation of any person or persons acting for or on behalf of the other, except as expressly set forth in this Agreement. The Parties further acknowledge that they and their counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution of this Agreement. Each Party has read and approved the language of this Agreement, with the assistance of counsel.

16.2. Entire Agreement/Construction and Interpretation. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered or a Final Approval Order is subsequently reversed by an appeal, the Parties agree to use their best efforts to cure any defect(s) identified by the Court. If, despite their best efforts, the Parties cannot cure said defects, this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action or any other proceeding. Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

16.3. Headings and Sections. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

16.4. Modification Only in Writing. This Settlement Agreement may not be modified or amended except in writing and signed by all of the Parties. This Settlement Agreement constitutes the entire, fully integrated agreement among the Parties and cancels and supersedes all prior written and unwritten agreements and understandings pertaining to the Settlement of the Action.

16.5. Counterpart Originals. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16.6. Parties to Bear Costs. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her, or its own costs of the Action.

16.7. Reasonable Extensions of Time. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

16.8. Communications Regarding Settlement. The Parties agree that any communications by the Parties regarding this Settlement will be consistent with the Settlement Agreement, Preliminary Approval Order, Class Notice, and Final Approval Order. Nothing in this paragraph shall limit (1) Class Counsel's ability to communicate with the Class Representative, Class Members upon Final Approval, or the Court, and (2) SDHM's ability to communicate with its dealers, customers, or the Court.

16.9. Administration of the Settlement. The administration of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release, as provided herein. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement, ensuring compliance with the reimbursement and replacements as provided herein, and allowing for discovery related to objectors, if any.

16.10. Drafting of Settlement Agreement. The determination of the terms of, and the drafting of, this Settlement Agreement has been by mutual agreement after negotiation, with

consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. The Parties were represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

16.11. Disputes Regarding Settlement Agreement. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement shall be submitted to the Court for resolution.

16.12. Enforcement; Attorneys' Fees. Without affecting the finality of the judgment in any way, the Court shall retain jurisdiction pursuant to *Code of Civil Procedure* § 664.6, over (a) any other action necessary to implement the terms of the Final Approval Order and Judgment and/or this Agreement, including any further amendments to the Final Approval Order and Judgment to provide relief to additional members of the Class who may be identified after entry of the Final Approval Order and Judgment; and (b) the construction, interpretation, implementation, and enforcement of the Final Approval Order and Judgment, until each and every act agreed to be performed by the Parties there under has in fact been fully performed. The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to their reasonable attorneys' fees and costs.

16.13. Governing Law. This Agreement shall be governed and interpreted under California law.

16.14. Performance of Provisions. Any failure by any of the Parties to insist upon the strict performance by any of the other Parties of any of the provisions of this agreement shall not be deemed a waiver of any provision of this agreement, and such Party, notwithstanding such failure,

shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

16.15. Notices in Writing. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Plaintiff Blake Miliate individually and as Class Representative:

Adam McNeile  
Kristin Kemnitzer  
KEMNITZER, BARRON & KRIEG LLP  
1120 Mar West St., Suite C-2  
Tiburon, CA 94941  
(800) 520-4525  
[adam@kbklegal.com](mailto:adam@kbklegal.com)  
[kristin@kbklegal.com](mailto:kristin@kbklegal.com)

For Defendant SDHM:

Gregory K. Sabo  
Chelsea L. Zwart  
CHAPMAN GLUCKSMAN  
11900 W. Olympic Blvd., Suite 800  
Los Angeles, CA 90024  
(310) 207-7722  
[gsabo@cgdrllaw.com](mailto:gsabo@cgdrllaw.com)  
[czwart@cgdrllaw.com](mailto:czwart@cgdrllaw.com)

IN WITNESS WHEREOF, Plaintiff BLAKE MILIATE and Defendant SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN DIEGO HOUSE OF MOTORCYCLES, INC. have executed this Settlement Agreement on the date(s) indicated below.

Dated: 12/12/2024



\_\_\_\_\_  
BLAKE MILIATE  
Individually and as Class Representative

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRANDY TREADWAY  
As the Authorized Representative of  
SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN  
DIEGO HOUSE OF MOTORCYCLES, INC.

APPROVED AS TO FORM:

shall have the right thereafter to insist upon the specific performance of any and all of the provisions herein.

16.15. Notices in Writing. All notices to the Parties or counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

For Plaintiff Blake Miliate individually and as Class Representative:      For Defendant SDHM:

Adam McNeile  
Kristin Kemnitzer  
KEMNITZER, BARRON & KRIEG LLP  
1120 Mar West St., Suite C-2  
Tiburon, CA 94941  
(800) 520-4525  
[adam@kbklegal.com](mailto:adam@kbklegal.com)  
[kristin@kbklegal.com](mailto:kristin@kbklegal.com)


Gregory K. Sabo  
Chelsea L. Zwart  
CHAPMAN GLUCKSMAN  
11900 W. Olympic Blvd., Suite 800  
Los Angeles, CA 90024  
(310) 207-7722  
[gsabo@cgdrlaw.com](mailto:gsabo@cgdrlaw.com)  
[czwart@cgdrlaw.com](mailto:czwart@cgdrlaw.com)

IN WITNESS WHEREOF, Plaintiff BLAKE MILIATE and Defendant SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN DIEGO HOUSE OF MOTORCYCLES, INC. have executed this Settlement Agreement on the date(s) indicated below.

Dated: \_\_\_\_\_

\_\_\_\_\_  
BLAKE MILIATE  
Individually and as Class Representative

Dated: 12-13-24

  
\_\_\_\_\_  
BRANDY TREADWAY  
As the Authorized Representative of  
SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN  
DIEGO HOUSE OF MOTORCYCLES, INC.

APPROVED AS TO FORM:

Dated: December 12, 2024



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Adam McNeile  
Kristin Kemnitzer  
KEMNITZER BARRON & KRIEG  
Attorneys for Plaintiff  
BLAKE MILIATE INDIVIDUALLY AND AS CLASS  
REPRESENTATIVE

Dated: December 13, 2024



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Gregory K. Sabo  
Chelsea L. Zwart  
CHAPMAN GLUCKSMAN  
Attorneys for Defendant  
SAN DIEGO HOUSE OF MOTORCYCLES, LLC fka SAN  
DIEGO HOUSE OF MOTORCYCLES, INC.



# **EXHIBIT A**