

## **SETTLEMENT AND RELEASE AGREEMENT**

This SETTLEMENT AND RELEASE AGREEMENT (“Agreement”) is made and entered into by and between Isaiah Gomez on behalf of himself, the Subclass as defined herein, the Settlement Class as defined herein, all others similarly situated, and on behalf of the general public (“Plaintiff”), on the one hand, and Defendants Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson Motor Company Operations, Inc. (collectively, “Harley-Davidson,” “Defendants” or “Harley-Davidson Defendants”), on the other hand (the parties to this Agreement are collectively referred to as the “Parties,” or individually as a “Party”).

### **RECITALS**

A. On or about December 30, 2015, Plaintiff Isaiah Gomez filed an action in the Superior Court for the State of California for the County of San Diego captioned *Isaiah Gomez, an individual, on behalf of himself, the proposed class(es), all others similarly situated, and on behalf of the general public, Plaintiff v. Mycles Cycles, Inc., a California corporation, d/b/a San Diego Harley-Davidson, et al.*, Case No. 37-2015-00043311-CU-BT-CTL. Plaintiff subsequently filed an Amended Complaint on or about January 28, 2016 naming Harley Davidson, Inc. and Harley-Davidson Motor Company, Inc. as additional Defendants, and a Second Amended Complaint (“SAC”) on or about February 24, 2017 naming Harley-Davidson Motor Company Operations, Inc. as an additional Defendant (the “Action”).

B. Plaintiff’s SAC alleged claims against Harley-Davidson for alleged violations of California Business and Professions Code §§17200, *et seq.* and 17500, *et seq.*, the California Legal Remedies Act, California Civil Code §§1750, *et seq.*, aiding and abetting, intentional misrepresentation, negligence, negligent misrepresentation, quasi contract/assumpsit, and breach of express and implied warranties. The Court granted Harley-Davidson’s demurrer on Plaintiff’s

claims for negligence, negligent misrepresentation, quasi contract/assumpsit, breach of express warranty, and breach of implied warranty.

C. Plaintiff's claims against Harley-Davidson are generally based on two theories as alleged by Plaintiff: (1) that Harley-Davidson furnished illegal and/or non-compliant price hang tags to its California dealers, including but not limited to San Diego Harley-Davidson ("SDHD"), that allegedly failed to comply with or violated the California Vehicle Code and other laws, regulations and requirements, did not submit its motorcycle price hang tags for review and approval by the California Department of Motor Vehicles ("DMV"), and/or improperly permitted dealers to create and/or modify motorcycle price hang tags in a misleading manner ("Hang Tag Claims"); and (2) that Harley-Davidson represented in certain advertising that "setup fees" were excluded from MSRP even though California law requires manufacturers like Harley-Davidson to specify (for the dealer) pre-delivery tasks and compensate/reimburse dealers for performing such tasks, and that Harley-Davidson did in fact specify its pre-delivery tasks to dealers and compensate/reimburse dealers for such specified pre-delivery tasks, and certain consumers who purchased new motorcycles were allegedly routinely charged fees by the dealer for the same tasks, as "setup" or "dealer preparation" ("Setup Fees Claims").

D. Plaintiff sought class certification of several of his Hang Tag Claims and Setup Fees Claims against Harley-Davidson and Defendant Mycles Cycles, Inc. d/b/a San Diego Harley-Davidson ("MCI").

E. On or about August 10, 2018, the Court entered an order certifying a class against MCI on Plaintiff's UCL and FAL claims consisting of all consumers who, for the period beginning December 30, 2011, through the date of final class notice and/or trial, purchased or leased from San Diego Harley-Davidson a new, assembled motorcycle (the "MCI Class"). The Court's August

10, 2018 order also certified Plaintiff's UCL and FAL Hang Tag Claims against Harley-Davidson, and defined the class as "all consumers, for the period beginning January 29, 2012, through the date of final class notice and/or trial, who purchased or leased a new, assembled motorcycle in the State of California from an authorized dealer/franchisee of H-D."

F. On or about June 21, 2019, the Court granted Harley-Davidson's motion to decertify the Hang Tag class certified against Harley-Davidson on or about August 10, 2018, but invited additional briefing as to a subclass proposed by Plaintiff's counsel during oral argument.

G. On or about August 16, 2019, the Court entered an order certifying a subclass on Plaintiff's UCL and FAL Hang Tag Claims based on SDHD's use of hang tags referred to as "Basic" hang tags made available by Harley-Davidson, as follows:

"All consumers who, at any point after January 28, 2012, until final class notice and/or trial, purchased or leased a new, assembled Harley-Davidson motorcycle from MYCLES CYCLES, INC. dba SAN DIEGO HARLEY-DAVIDSON (aka SDHD), attached to which was a so-called 'basic' price hang tag, **AND** paid one or more of the following: (a) more than Harley-Davidson's manufacturer suggested retail price ("MSRP") for the motorcycle; and/or (b) any amount charged by the dealer for: (i) manufacturer-installed options and/or accessories; (ii) freight or transportation; (iii) assembly, preparation, or both of the motorcycle (commonly referred to as dealer preparation or setup); and/or (iv) dealer-added accessories and/or optional equipment.

'Basic' hang tags are typically recognizable because they: (a) do not disclose Harley-Davidson's MSRP for the motorcycle and/or Harley-Davidson's MSRP for any factory options/accessories where prices would normally be in an "ON THIS BIKE" box (normally in the lower right quadrant of the motorcycle price hang tag); and (b) may instead have dealer messages on them, such as 'Dealer's Price Upon Request,' 'Ask About Our Retail Market Value,' " Ask a Fit Specialist About Our Retail Market Value," and/or similar language. Examples of such price hang tags are found at [www.harley-davidsonlawsuit.com](http://www.harley-davidsonlawsuit.com)."

(the "Subclass")

H. On or about February 27, 2020, the Court entered an order appointing KCC Class Action Services LLC (“KCC”) as administrator of class notice, authorizing, approving and ordering issuance of notice to the Subclass and the MCI Class, and for KCC to receive and track exclusion/opt out requests.

I. Notice was sent to members of the MCI Class and potential members of the Subclass by KCC pursuant to the Court’s February 27, 2020 order, which included consumers who purchased or leased a new, assembled Harley-Davidson motorcycle from San Diego Harley-Davidson from December 30, 2011 to February 14, 2020.

J. On or about February 17, 2021, the Court entered an order denying Harley-Davidson’s motion for summary adjudication.

K. Prior to filing the Actions, and thereafter, Plaintiff performed certain pre-litigation and additional litigation investigation. Throughout the Action, the Parties participated in substantial discovery over a period of over five years, including the review of voluminous documents produced by Harley-Davidson, MCI and Plaintiff; numerous sets of written discovery served on Harley-Davidson and MCI including interrogatories, requests for production, and requests for admission; the depositions of four Harley-Davidson personnel, including those designated by Harley-Davidson as persons most qualified on numerous topics; the depositions of two MCI personnel, including those designated by MCI as persons most qualified on numerous topics; the deposition of non-party California Department of Motor Vehicles, through a person most qualified witness on numerous topic; and the deposition of Plaintiff. Plaintiff also issued numerous public records act requests (per Government Code § 6250 et seq.) to the DMV and the California New Motor Vehicle Board, from whom he obtained and analyzed substantial documentation relevant to the claims asserted against Harley-Davidson and MCI.

L. Class Counsel conducted a thorough investigation and evaluation of the facts and law relating to the claims asserted in the Action to determine how best to serve the interests of Plaintiff Isaiah Gomez and the Subclass.

M. Counsel for the Parties have conducted extensive arm's-length negotiations regarding the substance and procedure of a possible class settlement prior to entering into this Agreement, including participating in four mediations. In addition, the Parties prepared and/or exchanged mediation briefs and settlement-related correspondence, and otherwise engaged in extensive analysis of their own claims/defenses and the claims/defenses of their adversary(ies)/other parties. The most recent mediation took place on September 14, 2021 with Justice Steven Stone of JAMS, which ultimately resulted in this Settlement.

N. Plaintiff and Class Counsel believe the Released Claims, as defined herein, have merit. Plaintiff and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings that would be necessary to further prosecute the Released Claims against Harley-Davidson through trial and appeals, and the importance of providing timely relief to Subclass Members. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risk of further litigation, especially in complex actions such as this Action, as well as the risks, uncertainties, difficulties, and delays inherent in such litigation. Plaintiff and Class Counsel are mindful of the inherent problems of proof under, and possible defenses to, the Released Claims. Plaintiff and Class Counsel believe that the proposed Settlement set forth in this Agreement confers substantial benefits upon the Subclass. Based on their evaluation of all of these factors, Plaintiff and Class Counsel have determined that the Settlement is in the best interests of the Subclass and that it represents a fair, reasonable, and adequate resolution of the Action.

O. Harley-Davidson denies any liability to Plaintiff or the Subclass. Harley-Davidson has taken thorough discovery concerning the claims asserted by Plaintiff and believes it has meritorious defenses to all of the claims raised in the Action. Nevertheless, Harley-Davidson recognizes and acknowledges the risks, uncertainties, difficulties, expense, and length of continued proceedings that would be necessary to defend the Action through trial and appeals. In agreeing to enter into this Agreement, Harley-Davidson has also taken into account the uncertain outcome and risk of any further litigation, especially in complex actions such as this Action, as well as the difficulties and delays inherent in such litigation.

NOW, THEREFORE, IT IS HEREBY AGREED, by and among the Parties, subject to approval of the Court pursuant to Rule 3.769 of the California Rules of Court (“Rule 3.769”), that the Action and the Released Claims shall be fully and finally compromised, settled, and released, subject to and upon the terms and conditions set forth below. This Agreement resolves the entire Action between Plaintiff, the Subclass and Harley-Davidson, but shall not have any impact on the claims asserted by Plaintiff against MCI and/or its alleged successor-in-interest, Motorsports of San Diego, LLC (“MSD”), which shall be reserved and shall not in any way be impacted or affected by this settlement.

#### **I. DEFINITIONS.**

In addition to words and terms defined elsewhere in this Agreement, the following words and terms shall have the meanings and definitions stated below when they are used in this Agreement. If a word or term included in a definition is also defined in this Agreement, that definition of the word or term shall apply.

A. **“Bill of Sale”** means a document prepared and provided by a Harley-Davidson authorized dealer to a Settlement Class Member that accurately documents the purchase of a New Harley-Davidson Motorcycle by the Settlement Class Member and states the Purchase Price.

B. **“Class Counsel”** or **“Plaintiff’s Counsel”** means Ross H. Hyslop and/or Pestotnik LLP.

C. **“Class Notice”** means the Court-approved notice of settlement that is in substantially the same form as Exhibit A which will be sent to Settlement Class Members by the Class Notice Administrator following Preliminary Approval pursuant to Rule 3.769.

D. **“2020 Class Notice”** means the notice that was previously sent by KCC to members of the MCI Class and potential members of the Subclass pursuant to the Court’s February 27, 2020 order.

E. **“Class Notice Administrator”** means KCC Class Action Services LLC.

F. **“Court”** means the Superior Court for the State of California for the County of San Diego.

G. **“Defendants,” “Harley-Davidson Defendants”** or **“Harley-Davidson”** means Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson Motor Company Operations, Inc.

H. **“Effective Date of Settlement”** or **“Effective Date”** means the date on which the Final Approval Order and Judgment has been entered by the Court and has become Final. **“Final”** means (a) if no objection is raised to the proposed settlement at the Final Fairness Hearing, the date on which the Final Approval Order and Judgment is entered; or (b) if any objection is raised to the proposed settlement at the Final Fairness Hearing and (as referenced in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260) the objecting Class Member(s) either properly intervene(s) and/or file(s) a timely motion to vacate the judgment under C.C.P. § 663 and is denied relief, the latest of (i) the expiration date of the time for the filing or notice of any appeal from the Final Approval Order and Judgment, (ii) the date of final affirmance of any appeal

of the Final Approval Order and Judgment, (iii) the expiration of the time for, or the denial of, a petition for review by the Supreme Court of California and, if review is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant; (iv) the expiration of the time for, or the denial of, a petition for writ of certiorari by the Supreme Court of the United States and, if certiorari is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to that grant; or (v) the date of final dismissal of any appeal from the Final Approval Order and Judgment or the final dismissal of any proceeding on certiorari to review the Final Approval Order and Judgment. The date the settlement becomes “Final,” as used herein, shall not be extended merely based on the assertion of an objection to the settlement by a putative Class Member, if such person does not properly intervene and/or file a timely motion to vacate the judgment under C.C.P. § 663 and is denied relief.

I. **“Final Approval”** means the entry by the Court of an order and judgment following the Final Approval Hearing pursuant to Rule 3.769(g) and (h).

J. **“Final Approval Date”** means the date on which the Final Approval Order and Judgment are entered.

K. **“Final Approval Hearing”** means the final approval hearing conducted pursuant to Rule 3.769(g), which is held after Preliminary Approval and after Class Notice is provided, in which the Court will determine whether this Agreement should be finally approved as fair, reasonable, and adequate, and whether the proposed Final Approval Order and Judgment should be entered.

L. **“Final Approval Order and Judgment”** means the order and judgment entered by the Court following the Final Approval Hearing pursuant to Rule 3.769(h), which is in all material respects similar to the form attached hereto as Exhibit B.



M. **“Motorcycle Rebate Claim Form”** means a form to be sent to Settlement Class Members that a Settlement Class Member uses to request a Rebate after the Settlement Class Member’s future purchase of a New Harley-Davidson Motorcycle from a Harley-Davidson authorized dealer located in the United States, in the form attached hereto as Exhibit C.

N. **“Named Plaintiff”** means Isaiah Gomez.

O. **“New Harley-Davidson Motorcycle”** means a new, not previously titled Harley-Davidson motorcycle purchased by a Settlement Class Member from a Harley-Davidson authorized dealer located in the United States after the Final Approval Date.

P. **“Notice Date”** means the date ten days after the Class Notice Administrator completes sending Class Notice to Settlement Class Members.

Q. **“Preliminary Approval”** means entry of an order by the Court preliminarily approving the proposed Settlement of this Action in accordance with the terms of this Agreement, approving the Class Notice described in this Agreement, and setting a date for a Final Approval Hearing, pursuant to Rule 3.769.

R. **“Preliminary Approval Date”** means the date of Preliminary Approval.

S. **“Preliminary Approval Order”** means the order entered by the Court preliminarily approving the proposed Settlement of this Action in accordance with the terms of this Agreement, approving the Class Notice described in this Agreement, and setting a date for a Final Approval Hearing, pursuant to Rule 3.769.

T. **“Purchase Price”** means the cash price for a New Harley-Davidson Motorcycle and excludes tax, title, service or maintenance contracts, license, documentation charges or fees, freight charges or fees, and other charges or fees.

U.     **“Rebate”** means a payment to a Settlement Class Member following the Settlement Class Member’s future purchase of a New Harley-Davidson Motorcycle upon and subject to the Settlement Class Member’s compliance with the terms, conditions and requirements of paragraph II.B. of this Agreement.

V.     **“Rebate Claim”** means a Settlement Class Member’s request for a Rebate made by sending a Motorcycle Rebate Claim Form to the Rebate Claims Administrator which is received by the Rebate Claims Administrator.

W.     **“Rebate Claimant”** means a Settlement Class Member who has sent a Motorcycle Rebate Claim Form to the Rebate Claims Administrator and the Rebate Claims Administrator has received it.

X.     **“Rebate Claims Administrator”** means JND Legal Administration, except that Harley-Davidson may retain a different Rebate Claims Administrator with the agreement of Class Counsel or, absent agreement, with the approval of the Court.

Y.     **“Released Claims”** means any and all claims asserted in the Action by Plaintiff individually and, as applicable, the Subclass and Settlement Class, all other claims, demands, actions, and causes of action of any nature whatsoever arising from the facts alleged in the SAC, including, but not limited to, any claim for violations of federal, state, or other law (whether in contract, tort, or otherwise, including statutory and injunctive relief, common law, property, warranty and equitable claims), and also including any claims arising from the facts alleged in the SAC that could have been or could be asserted by Plaintiff or the Settlement Class Members against the Released Parties in the Action, or in any other complaint, action, or litigation in any other court or forum, including but not limited to claims based upon alleged unfair competition, false advertising, unfair business practices, violations of the Consumer Legal Remedies Act, or

violations of any federal, state, local, statutory, or common law, including both known and unknown claims, that could have been or could be asserted against any of the Harley-Davidson Defendants or a Released Party in any forum by Plaintiff or any Settlement Class Member or any of them, or their heirs, successors, or assigns or any of them.

Z. **“Released Parties”** means Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson Motor Company Operations, Inc., and their past and present directors, officers, employees, partners, principals, agents, heirs, executors, administrators, successors, reorganized successors, subsidiaries, divisions, parents, related or affiliated entities, underwriters, insurers, coinsurers, re-insurers, licensees, divisions, joint ventures, assigns, associates, attorneys, and controlling shareholders.

AA. **“Settlement”** means the settlement contemplated by and described in this Agreement.

BB. **“Settlement Agreement”** means this Agreement.

CC. **“Settlement Class”** means all persons to whom the 2020 Class Notice was sent by KCC pursuant to the Court’s February 27, 2020 order, and who did not timely opt out.

DD. **“Settlement Class Member Identification Number”** means the unique number assigned to each Settlement Class Member by the Class Notice Administrator, starting with 0001 and using consecutive numbers thereafter, with each Settlement Class Member being assigned a separate number.

EE. **“Settlement Class Members”** means and includes all members of the Settlement Class.

FF. “**Settlement Website**” means the public website using domain/website name WWW.SDHDhangtaglitigation.com that will be used to provide information regarding the Settlement to Settlement Class Members.

GG. “**Settling Parties**” means Plaintiff and the Harley-Davidson Defendants.

HH. “**Unknown Claims**” means any and all Released Claims that any Settlement Class Member does not know to exist against any of the Released Parties and that, if known, might have affected his or her decision to enter into or to be bound by the terms of this Agreement.

## **II. SETTLEMENT TERMS AND CONSIDERATION.**

### **A. Payment to Plaintiff Isaiah Gomez.**

Harley-Davidson will pay Named Plaintiff Isaiah Gomez, as a class representative service fee, an amount to be determined by the Court not to exceed \$30,000.00. Within fourteen (14) business days after the Effective Date, Harley-Davidson shall pay by wire Named Plaintiff Isaiah Gomez the amount awarded by the Court as a class representative service fee, not to exceed \$30,000. Named Plaintiff Isaiah Gomez will provide a W-9 and wiring instructions to Harley-Davidson’s counsel before the Effective Date.

### **B. Rebates.**

Harley-Davidson will provide a Rebate to each Settlement Class Member that purchases a New Harley-Davidson Motorcycle in accordance and in compliance with the terms, conditions and process set forth in this paragraph II.B. Each Settlement Class Member will be entitled to one Rebate after the future purchase of one New Harley-Davidson Motorcycle regardless of the number of Harley-Davidson motorcycles the Settlement Class Member previously purchased that caused the Settlement Class Member to become a member of the Subclass and/or MCI Class.

1. Non-transferrable.

Rebates are non-transferrable. Only Settlement Class Members are eligible to receive a Rebate. Rebate Claims must be submitted using the Motorcycle Rebate Claim Form included with Class Notice.

2. Redemption period.

In order to receive a Rebate, the Motorcycle Rebate Claim Form must be received by the Rebate Claims Administrator no later than one year from the Final Approval Date. By way of example, if the Final Approval Date is June 2, 2022, the Motorcycle Rebate Claim Form would have to be received by the Rebate Claims Administrator on or before June 1, 2023 at 5:00 p.m. Pacific Time. If it is received after June 1, 2023, or after 5:00 p.m. Pacific Time on June 1, 2023, the Settlement Class Member will not receive a Rebate.

3. Rebate Amounts.

The amount of the Rebate depends on the Purchase Price of the New Harley-Davidson Motorcycle purchased by the Settlement Class Member after the Final Approval Date, as follows:

- \$400 for the future purchase of a New Harley-Davidson Motorcycle where the Purchase Price for the New Harley-Davidson Motorcycle is \$20,000 or less.
- \$500 for the future purchase of a New Harley-Davidson Motorcycle where the Purchase Price for the New Harley-Davidson Motorcycle is \$20,001 - \$25,000.
- \$600 for the future purchase of a New Harley-Davidson Motorcycle where the Purchase Price for the New Harley-Davidson Motorcycle is more than \$25,000.

4. Administration and Process.

- a. A Settlement Class Member Identification Number will be assigned by the Class Notice Administrator to each Settlement Class Member. Each Motorcycle Rebate Claim Form will include the Settlement Class Member Identification Number assigned to the specific Settlement Class Member to whom the Motorcycle Rebate

Claim Form is mailed. The Class Notice Administrator will provide a copy of its list of Settlement Class Members, including their mailing addresses, emails, phone numbers and assigned Settlement Class Member Identification Numbers to the Rebate Claims Administrator, Class Counsel and Harley-Davidson's counsel.

b. One Motorcycle Rebate Claim Form will be included with the Class Notice sent to each Settlement Class Member.

c. In order to obtain a Rebate, and to become eligible to receive one, a Settlement Class Member must do all of the following:

(1) Purchase a New Harley-Davidson Motorcycle from an authorized Harley-Davidson dealer located in the United States after the Final Approval Date;

(2) Following the purchase of a New Harley-Davidson Motorcycle described in (1) above, the Settlement Class Member must completely fill out the Motorcycle Rebate Claim Form by providing all of the information requested in the form so that the information is legible, and sign and date the form;

(3) The Settlement Class Member must send both the completed and legible Motorcycle Rebate Claim Form and a legible copy of the Bill of Sale for the New Harley-Davidson Motorcycle to the Rebate Claims Administrator at the address identified in the form; and

(4) The Motorcycle Rebate Claim Form and Bill of Sale must be received by the Rebate Claims Administrator no later than one year from the Final Approval Date, and by 5:00 p.m. Pacific Time on the last day of the one year period.

d. Harley-Davidson will provide sufficient funds to the Rebate Claims Administrator to pay all Rebates that the Rebate Claims Administrator approves and finds to be timely submitted and in compliance with each of these requirements and terms.

5. Rebate Claims Processing and Investigation.

For each Motorcycle Rebate Claim Form that is received, the Rebate Claims Administrator will do the following:

- a. Confirm that the names on the Motorcycle Rebate Claim Form, the Bill of Sale, and the name associated with the Settlement Class Member Identification Number assigned to the Motorcycle Rebate Claim Form are all the same;
- b. Confirm that the Motorcycle Rebate Claim Form was received by the Rebate Claims Administrator no later than one year after the Final Approval Date;
- c. Confirm that a Rebate has not already been paid to the same Settlement Class Member or for the same Settlement Class Member Identification Number;
- d. Confirm that all of the information requested in the Motorcycle Rebate Claim Form and a Bill of Sale for the New Harley-Davidson Motorcycle were provided and are legible;
- e. Determine whether the New Harley-Davidson Motorcycle was purchased after the Final Approval Date by reviewing the Bill of Sale; and
- f. Determine the Purchase Price for the New Harley-Davidson Motorcycle from the Bill of Sale.

If the Rebate Claims Administrator determines that a Rebate Claim satisfies the requirements of ¶ II.B.1, 2 and 4, and is not required to be rejected pursuant to ¶ II.B.6, it will send a check by U.S. Mail to the Settlement Class Member to the address provided on the Motorcycle Rebate Claim Form within 60 days of either 1) receipt of the Motorcycle Rebate Claim Form and Bill of Sale, or 2) the Effective Date of Settlement, whichever is later. The amount of the check will be determined according to paragraph II.B.3. After sending a check, the Rebate Claims Administrator will record the date the check was sent and its amount for the Settlement Class Member and its Settlement Class Member Identification Number.

6. Rejection of Rebate Claims and Reporting

a. A Rebate will not be paid and the Rebate Claims Administrator will reject any Rebate Claim submitted in any of the following circumstances:

1) the Motorcycle Rebate Claim Form does not include all of the information requested in the form or the information is not legible; 2) a Bill of Sale is not provided with the Motorcycle Rebate Claim Form or is not legible; 3) the Purchase Price, as defined herein, cannot be determined from the Bill of Sale; 4) the Motorcycle Rebate Claim Form is received by the Rebate Claims Administrator more than one year after the Final Approval Date; 5) the names on the Motorcycle Rebate Claim Form, Bill of Sale, and the name of the Settlement Class Member to whom the Motorcycle Rebate Claim Form was sent are not all the same; 6) the New Harley-Davidson Motorcycle was purchased by the Settlement Class Member on or before the Final Approval Date; or 7) the Rebate Claims Administrator previously received a Motorcycle Rebate Claim Form for the same Settlement Class Member assigned the same Settlement Class Member Identification Number, and the Rebate Claim was approved and paid.

b. If the Rebate Claims Administrator rejects a Rebate Claim, it will send a notice to the Settlement Class Member stating that the Rebate Claim has been rejected and the reason(s) for the rejection (e.g., missing information, missing Bill of Sale, ineligibility for a Rebate, etc.) (“Rejection Notice”). If a Rebate Claim is rejected due to missing or illegible information or Bill of Sale and the original Rebate Claim was submitted by the applicable one year deadline, the Settlement Class Member will have



one opportunity to resubmit the Rebate Claim if it is received by the Rebate Claims Administrator with the missing or legible information or Bill of Sale within 45 calendar days of the date the Rejection Notice was sent. The Rejection Notice will inform such Settlement Class Members of the opportunity to resubmit a Rebate Claim with the missing information or Bill of Sale and state that it must be received by the Rebate Claims Administrator within 45 calendar days of the date the Rejection Notice was sent or the Settlement Class Member will not receive a Rebate. The Rebate Claims Administrator will include in each such Rejection Notice the date upon which the notice was sent to allow the Settlement Class Member to determine the date by which the 45 day period will end. For example, if a Rejection Notice is sent by the Rebate Claims Administrator on December 5, 2022, the resubmitted Rebate Claim would have to be received by the Rebate Claims Administrator on or before January 19, 2023 at 5:00 p.m. Pacific Time. If it is received after January 19, 2023, or after 5:00 p.m. Pacific Time on January 19, 2023, the Settlement Class Member will not receive a Rebate. Rejection Notices will be sent to Settlement Class Members by email using the email address provided on the Motorcycle Rebate Claim Form. If no email address is provided on the form, and Class Notice was sent to the Settlement Class member by email, the email address used for sending Class Notice will be used. If an email address is not available, it will be sent by U.S. Mail to the mailing address provided on the Motorcycle Rebate Claim Form.

c. Neither the Rebate Claims Administrator nor Harley-Davidson shall have any obligation to pay any Rebate or approve any Rebate Claim that is not submitted in full compliance with these terms and requirements.

d. The Rebate Claims Administrator will provide monthly updates to Class Counsel and Harley-Davidson's Counsel concerning the name and contact information of each person submitting a Rebate Claim, the name and contact information of each person receiving a Rebate, and the amount thereof, the name and contact information of each person as to whom the Rebate Claim was rejected, and the reason(s) therefor, the number of Rebate Claims received by the Rebate Claims Administrator, the number of approved Rebates and the amount of each approved Rebate, the total dollar amount of Rebate Claims approved, the number of Rebate Claims rejected and the basis for each rejected Rebate Claim, and the number of additional Rebate Claims still undergoing processing. Class Counsel or Harley-Davidson's counsel may make reasonable requests for information and/or documentation specific to one or more Rebate Claims processed by the Rebate Claims Administrator to evaluate and assess the claim administration process or any concerns raised by Harley-Davidson, Class Counsel, and/or a specific Settlement Class Member.

e. Motorcycle Rebate Claim Forms may be submitted by Settlement Class Members to the Rebate Claims Administrator at any time after the Final Approval Date, but no Rebates will be paid until after the Effective Date.

**C. Expenses for Providing Class Notice of the Settlement and Administration of Rebates.**

Harley-Davidson will pay all expenses associated with the Class Notice Administrator providing Class Notice to the Settlement Class Members according to the terms set forth in Paragraph IV.B. Harley-Davidson will retain the Rebate Claims Administrator to administer the Rebates described above and will bear all costs and expenses related to the administration of the Rebates.

**D. Injunctive relief.**

1. Harley-Davidson stipulates to the following injunctive relief, which shall be contained in the Final Approval Order and Judgment:

- a. For five (5) years following the Effective Date of Settlement, Harley-Davidson, in any advertising or marketing materials intended for consumers that provide information about the MSRP of motorcycles, including on Harley-Davidson's website, will continue using the language that Harley-Davidson currently uses in these materials that states that Harley-Davidson reimburses dealers for performing manufacturer-specified pre-delivery inspection and setup tasks, or similar language.
- b. Harley-Davidson will permanently prevent Harley-Davidson authorized dealers located in California from being able to download from Harley-Davidson's hang tag creation process hang tags for new Harley-Davidson motorcycles previously referred to as Basic, Customizable and Factory Custom hang tags.
- c. Harley-Davidson will permanently prevent Harley-Davidson authorized dealers located in California from being able to use Harley-Davidson's hang tag creation process to modify MSRP information provided by Harley-Davidson on California VIN hang tags for both the price of the motorcycle and the price of manufacturer-installed options/accessories.
- d. Harley-Davidson will continue to submit representative samples of the hang tags it makes available to its Harley-Davidson authorized dealers located in California for use on new Harley-Davidson motorcycles to the California Department of Motor Vehicles for its approval in accordance with directions and instructions provided by the DMV.

2. In the event certain injunctive relief or an action required in paragraph D.1. is contrary to or prohibited by any applicable law, regulation or legal requirement, including as a result of a change in the law or application of the law, Harley-Davidson will not be obligated to comply with the particular injunctive relief term or take the action required by it only to the extent it is prohibited by or violates applicable law.

**E. Attorneys' Fees and Expenses.**

1. Harley-Davidson will pay Class Counsel reasonable attorneys' fees and expenses in an amount to be approved by the Court, not to exceed a total of \$1,650,000. Class Counsel will apply to the Court for an award of attorneys' fees and expenses to be paid by Harley-Davidson of no more than this amount (the "Fee and Expense Application"), to which Harley-Davidson shall consent and shall not object, provided the Fee and Expense Application does not exceed \$1,650,000. Class Counsel agrees to accept \$1,650,000 from Harley-Davidson as its portion of attorneys' fees and expenses associated with the litigation of this Action against Harley-Davidson, including the implementation of this Agreement and any appeal in connection with the Settlement. The Court will determine what amount of fees and expenses shall be awarded and issue an order stating the amount of fees and expenses to be awarded. The amount of fees to be awarded shall be determined by California law in effect on the date this Agreement is executed. The Parties expressly agree that any change in the law regarding attorneys' fees, including entitlement to fees or timing of payment, shall not affect the application of this provision. Under no circumstances will Harley-Davidson be required to pay more than \$1,650,000 for fees and expenses.

2. Any appeal of only the award of attorneys' fees and/or expenses will not affect the Parties and Rebate Claims Administrator's other obligations under the Final Approval Order and Judgment. This means that an appeal of only the attorneys' fees and/or expenses will

not extend the Effective Date or otherwise delay implementation of any Settlement benefits, except that Harley-Davidson's obligation to pay attorneys' fees and/or expenses will not arise until the appeal is finally resolved.

3. Subject to the preceding paragraph II.E.2, within fourteen (14) business days after the Effective Date of Settlement, Harley-Davidson shall pay by wire to the Pestotnik LLP trust account the amount awarded by the Court for attorneys' fees and expenses to Class Counsel not to exceed \$1,650,000. Class Counsel will provide a W-9 and wiring instructions to Harley-Davidson's counsel before the Effective Date of Settlement.

4. Plaintiff and Class Counsel acknowledge and agree that no further payment or consideration of any kind is contemplated or required from Harley-Davidson under this Agreement. This Agreement resolves any and all claims for attorney's fees, expenses and costs associated with the litigation of this Action against Harley-Davidson. Plaintiff and Class Counsel release any and all claims for any and all such fees, expenses and costs, and will not take any action to attempt to recover them from any of the Released Parties.

5. Any order or proceedings relating to Class Counsel's Fee and Expense Application, or any appeal solely from any order related thereto or reversal or modification thereof, will not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Approval Order and Judgment approving this Agreement.

### **III. RELEASE.**

#### **A. Released Claims**

The Parties intend to effect a global settlement of all claims, issues, and matters between them as it relates to the facts alleged in the SAC. In consideration for the releases and covenants set forth below, the Parties stipulate and agree as follows.

Upon Final Approval and by execution of this Agreement, and except for the rights and entitlements created by this Agreement, Plaintiff, the Named Plaintiff, the Settlement Class, and each Settlement Class Member shall be deemed to have and does hereby release, waive, and forever discharge the Harley-Davidson Defendants and the Released Parties of and from the Released Claims and Unknown Claims as defined herein (hereinafter referred to as the “Release”).

As to the foregoing release of the Released Claims and Unknown Claims only, Plaintiff agrees this Release shall constitute a general release and waiver which includes, without limitation, an express waiver to the fullest extent permitted by law by Plaintiff and the Settlement Class Members of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

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

**FOR CLARITY, THE CLASS IS PROVIDING A “GENERAL RELEASE” TO THE RELEASED PARTIES SOLELY REGARDING THE RELEASED CLAIMS AND UNKNOWN CLAIMS (AS DEFINED HEREIN).**

Plaintiff acknowledges and agrees that this waiver is an essential and material term of the Release, and that without such waiver, the Agreement would not have been entered into. Plaintiff acknowledges the significance and consequences of the Release and of the specific waiver of Section 1542. Plaintiff acknowledges that he has read this Agreement, including the above Civil Code section, and that he understands that he is waiving any benefits and rights granted pursuant to California Civil Code section 1542 on behalf of himself and the Settlement Class.

The foregoing release shall not operate to release MCI, SDHD, MSD, and/or any other Harley-Davidson dealer from potential liability.

**B. Total Satisfaction of Released Claims.**

Any benefits available or obtained pursuant to this Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon the Named Plaintiff and all Settlement Class Members who do not opt out of the Settlement.

**C. Release Not Conditioned on Claim or Payment.**

The Release shall be effective with respect to all Settlement Class Members regardless of whether those Settlement Class Members ultimately submit a Rebate Claim or receive a Rebate under this Agreement.

**D. Basis for Entering Agreement.**

Class Counsel acknowledges that he has conducted sufficient independent investigation and discovery to enter into this Agreement and that he executes this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement. Plaintiff acknowledges, agrees, and specifically represents and warrants that he has discussed with Class Counsel the terms of this Agreement and has received legal advice with respect to the advisability of entering into this Agreement and the Release, and the legal effect of this Agreement and the Release. The representations and warranties made throughout this Agreement shall survive the execution of the Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of the Parties.

**E. Material Term.**

Plaintiff and Class Counsel hereby agree and acknowledge that Paragraph III was separately bargained for and constitutes a key, material term of this Agreement that shall be reflected in the Final Approval Order and Judgment.

**IV. WAIVER OF FIVE YEAR TRIAL DEADLINE OF C.C.P. § 583.310 AND STIPULATION TO EXTEND TIME WITHIN WHICH ACTION SHALL BE BROUGHT TO TRIAL, IF NECESSARY**

Harley-Davidson expressly waives any right and/or protection afforded by C.C.P. § 583.310, which provides that “an action shall be brought to trial within five years after the action is commenced against the defendant,” as follows:

In the event that trial against Harley-Davidson ever becomes necessary (such as may occur if, for example, the Court denied Plaintiff’s motion(s) for preliminary and/or final approval, or an appellate court reversed the trial court’s order of final approval, and the Parties were unable to agree on a revised settlement meeting court approval), this provision shall operate as a stipulation from Harley-Davidson, as provided for in C.C.P. § 583.330, to extend the time within which this Action shall be brought to trial, if necessary, by an additional period of one year from the date that a trial becomes necessary as described in this paragraph. By way of illustration, if trial became necessary effective July 30, 2022, this provision shall operate to further extend the five year trial deadline of C.C.P. § 583.310 through and including July 30, 2023, without any gaps in which Harley-Davidson could contend that the five year trial deadline of C.C.P. § 583.310 lapsed, and therefore the Action was subject to dismissal.

**V. SETTLEMENT APPROVAL PROCESS.**

**A. Approval of Settlement.**

Following the execution of this Agreement by the Parties, Class Counsel will file a motion for preliminary approval of this Agreement pursuant to and in compliance with Rule 3.769(c).



**B. Notice to Class Members.**

Following Preliminary Approval, the Class Notice Administrator will send the Court-approved Class Notice (Exhibit A) to Settlement Class Members by first-class mail or email at Harley-Davidson's expense. The Class Notice Administrator shall use its best efforts to complete the sending of the Class Notice to Settlement Class Members within 30 days of the Preliminary Approval Date. Email will be used for sending Class Notice to Settlement Class Members who previously were sent the 2020 Class Notice by email, and U.S. Mail will be used for sending Class Notice to Settlement Class Members who were previously sent the 2020 Class Notice by U.S. Mail. The email and mailing addresses used to send the 2020 Class Notice will be used by the Class Notice Administrator to send Class Notice. Class Notice will include the Motorcycle Rebate Claim Form.

**C. Response to Notice.**

1. Objections to the Settlement.

Any Settlement Class Member who intends to object to the Settlement must, by the date specified in the Preliminary Approval Order and recited in the Class Notice, send a written objection to the Class Notice Administrator, post-marked by the deadline. Any objection to the Settlement must be personally signed by the Settlement Class Member (if the Settlement Class Member is represented by counsel, the objection must also be signed by such counsel), and must include the objector's name, address, phone number, date, signature, and an explanation of the objection.

2. Requests for Exclusion.

Any Settlement Class Member who wishes to be excluded from the Settlement Class and not be bound by this Agreement must submit a written request for exclusion to the Class Notice Administrator at the address specified in the Class Notice. To be timely, the request for exclusion

must either be post marked by the date specified in the Preliminary Approval Order or received within seven days of that date. The request for exclusion must use the Form attached as Exhibit D (“Request for Exclusion”), which will be included in the Class Notice. To be effective, the Request for Exclusion must be sent in accordance with the Class Notice and must include all information requested in the form.

Any Request for Exclusion must be personally signed by the person requesting exclusion and by all persons who own to any extent the motorcycle for which exclusion is sought. Any Settlement Class Member who fails to submit a timely, compliant and complete Request for Exclusion sent to the proper address shall be subject to and bound by this Agreement, all determinations of the Court, and all orders and judgments entered.

Any purported Request for Exclusion sent to such address that is ambiguous or internally inconsistent with respect to the Settlement Class Member’s desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. The Class Notice Administrator will receive purported Requests for Exclusion and will follow guidelines developed jointly by Class Counsel and Harley-Davidson’s counsel for determining whether they meet the requirements of a Request for Exclusion. Any communication from Settlement Class Members (whether styled as an exclusion request, an objection, or a comment) as to which it is not readily apparent whether the Settlement Class Member meant to exclude himself/herself from the Settlement Class will be evaluated jointly by Class Counsel and Harley-Davidson’s counsel, who will make a good faith evaluation, if possible. Any uncertainties about whether a Settlement Class Member is requesting exclusion from the Settlement Class will be resolved by the Court.

The Class Notice Administrator will maintain a list of all Requests for Exclusion, and shall report the names and addresses of all such persons requesting exclusion to the Court, Harley-

Davidson's counsel, and Class Counsel seven days prior to the Final Approval Hearing, and the list of persons deemed by the Court to have excluded themselves from the Settlement Class will be attached as an exhibit to the Final Approval Order and Judgment.

**D. Final Approval Hearing.**

On the date set forth in the Preliminary Approval Order, a Final Approval Hearing will be held at which time the Court will consider: (1) whether to approve the Settlement as fair, reasonable, and adequate; (2) whether to approve the application for a payment to the Named Plaintiff as set forth in Paragraph II.A.; and (3) whether to approve Class Counsel's Fee and Expense Application.

**E. Withdrawal from Settlement.**

Both Plaintiff and Harley-Davidson shall have the option to withdraw from this Agreement, and to render it null and void, if any of the following occurs:

1. Any objection(s) to the proposed Settlement are sustained and such objection(s) result in changes to the Agreement that the withdrawing party deems in good faith to be material (e.g., because it increases the cost of the Settlement, or deprives the withdrawing Party of a material benefit of the Settlement);
2. Any attorney general is allowed to intervene in the Action and such intervention results in changes to the Agreement that the withdrawing Party deems in good faith to be material (e.g., because it increases the cost of the Settlement, or deprives the withdrawing Party of a material benefit of the Settlement);
3. The preliminary or final approval of the Settlement is not obtained without modification and any modification required by the Court for approval (including any modification that increases the attorney fees, and/or expenses, payment to Named Plaintiff, or Rebates, or changes the injunctive relief terms, agreed to herein as set forth in Paragraph II) is deemed in good faith to be material and is not agreed to by the withdrawing Party (e.g., because it increases the cost of the Settlement, or deprives the withdrawing Party of a significant benefit of the Settlement); or
4. Entry of the Final Approval Order and Judgment described in this Agreement is reversed or substantially modified by an appellate court.

However, a reversal or modification of an order awarding reasonable attorneys' fees and expenses shall not be a basis for withdrawal, provided that the amount of fees and expenses ultimately awarded does not exceed the amount set forth in Paragraph II.E. of this Agreement.

Harley-Davidson shall, in addition, have the option to withdraw from this Agreement, and to render it null and void, if more than 10% of the Settlement Class Members exclude themselves from the Settlement.

If any state or federal trial court sustains a collateral attack on this Agreement, Harley-Davidson and Class Counsel shall cooperate in attempting to reverse that ruling on appeal. If that ruling is affirmed on appeal by a state appellate court or by a federal circuit court of appeal, either Party, at its option, may withdraw from this Agreement.

To withdraw from the Agreement under this paragraph, the withdrawing Party must provide written notice to the other Party's lead counsel and to the Court. In the event either Party withdraws from the Agreement, this Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including the existence, certification, or maintenance of any purported class. In the event of such withdrawal, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. Upon withdrawal, either Party may elect to move the Court to vacate any and all orders entered pursuant to the provisions of this Agreement.

## **VI. MISCELLANEOUS PROVISIONS.**

### **A. Agreement to Cooperate to Effectuate Settlement.**

Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Agreement. The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of this Agreement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek the assistance of the Court to resolve such disagreement. The Parties further agree to make all reasonable efforts to ensure the timely and expeditious administration and implementation of this Agreement and to minimize the costs and expenses incurred therein.

### **B. Enforcement of Injunctive Relief Provisions.**

Any action or proceeding to enforce the injunctive relief provisions of paragraph II.D., above, shall not be initiated until after Harley-Davidson's time to cure has expired, as described in the following process:

1. Plaintiff and/or Class Counsel must provide written notice of any alleged violation of paragraph II.D.1. This written notice shall describe the date and nature of the alleged violation(s) and be sent to Harley-Davidson's counsel by both email at [pnystrom@dykema.com](mailto:pnystrom@dykema.com) and regular U.S. Mail addressed to Paul Nystrom c/o Dykema, 39577 Woodward Avenue, Suite 300, Bloomfield Hills, Michigan 48304.
2. Counsel for the Parties will meet and confer within 28 days of receipt of the written notice regarding the alleged violation(s) and attempt to determine if there was, in fact, a violation and if so, what action the Parties can agree be taken to remedy the claimed violation(s).
3. If the Parties agree through the meet and confer process that there was no violation, no Party shall be entitled to attorneys' fees. If the Parties agree through the meet and confer process that there was a violation and agree upon an action Harley-Davidson can take to remedy the violation, Harley-Davidson shall have twenty-eight days to remedy the violation. If Harley-

Davidson remedies the violation during this timeframe, no Party shall be entitled to attorneys' fees.

4. Only if the Parties are unable to agree through the meet and confer process whether there was a violation or unable to agree upon an action Harley-Davidson can take to remedy a violation, can Plaintiff and/or Class Counsel bring any action or proceeding to enforce this Agreement.
5. If proceedings are initiated to enforce the stipulated injunction in paragraph II.D.1. of this Agreement for an alleged violation, the only available remedies for a prevailing Plaintiff would be an order for Harley-Davidson to make changes to its practices in order to comply. Fees may be awarded only to the extent applicable law permits recovery of fees for breach of contract.

**C. Effects of Exhibits.**

The exhibits to this Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Agreement.

**D. No Admission.**

This Agreement is for settlement purposes only. Neither the fact of, nor any provision or language contained in this Agreement, nor any action taken relating to this Agreement, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, non-compliance, violation of law, or liability of any kind on the part of Harley-Davidson or any admissions by Harley-Davidson of any claim or allegation made in any action or proceeding against Harley-Davidson. The consideration set forth in this Agreement, including the Rebates, injunctive relief, and payments, are being provided and are agreed to by Harley-Davidson only to resolve the Action. Harley-Davidson denies any liability, that it has violated any laws, regulations or legal requirements, or that the injunctive relief it has agreed to is required or necessary to remedy any alleged violations. The terms of this Agreement shall not be construed otherwise. If this Agreement is terminated and becomes null and void, the class action portions of this Settlement shall have no further force and effect with respect to any

Party to the Action and shall not be offered in evidence or used in the Action or any other proceeding.

This Agreement shall not be offered or be admissible in evidence against Harley-Davidson in any action or proceeding, except in a proceeding brought by Plaintiff in the Action to enforce its terms. Information provided by Harley-Davidson to the Named Plaintiff and/or Class Counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever. The judgment entered pursuant to Rule 3.769(h) shall contain language stating “The Settlement Agreement shall not be offered or be admissible in evidence against Harley-Davidson in any action or proceeding, except in a proceeding brought by Plaintiff in this Action to enforce its terms.”

**E. Return of Confidential Documents.**

Within 30 days of the last event to occur below, plus one year (365 days), Plaintiff and Class Counsel shall destroy, in a secure and confidential manner, all documents and information marked or designated as Confidential or Highly Confidential – Attorney’s Eyes Only in this Action and in the action captioned as *Alfredo Fuentes, et al v. Riverside Motorcycle, Inc.*, case no. RIC 1515384, previously pending in the California Superior Court for Riverside County (“Fuentes Action”), as defined in and subject to the respective protective orders entered therein:

1. entry of a final order and/or judgment in the Action that results in Plaintiff’s claims as to both Harley-Davidson and MCI being resolved, including the final resolution of any appeals that may result therefrom;
2. entry of a final order and/or judgment in any action against Motorsports of San Diego, LLC or its successor related to the facts alleged in the SAC, including the final resolution of any appeals that may result therefrom;

3. entry of a final order and/or judgment in the action captioned *Lisa Hill v. Quaid Harley-Davidson, Inc.*, case no. CIVDS1826573, pending in the California Superior Court for San Bernardino County, that resolves Plaintiff Hill's claims as to Quaid Harley-Davidson, Inc., including the final resolution of any appeals that may result therefrom; or
4. any claims against Class Counsel by members of a class in this Action that are pending at the time of the last event to occur described in 1. – 3. are fully resolved.

Within seven days thereafter, Class Counsel shall certify in writing that the requirements of this paragraph have been fully satisfied and provide the written certification to Harley-Davidson's counsel. Prior to the time that they are destroyed in accordance with this paragraph, the documents and information shall be maintained and kept in accordance with the terms of the applicable protective orders.

**F. Entire Agreement.**

This Agreement represents the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the Settlement or subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. No modification or waiver of any provisions of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Party against whom enforcement of the Agreement is sought. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Approval Order



and Judgment, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Final Approval Order and Judgment and do not limit the rights of Settlement Class Members under this Agreement.

**G. Arm's-Length Negotiations.**

The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All terms, conditions, and exhibits in their exact form are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement. All Parties have participated in the drafting of this Agreement and it is not to be construed in favor of or against any of the Parties.

**H. Continuing Jurisdiction.**

The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including all Settlement Class Members, for the purpose of the administration, interpretation and enforcement of this Agreement.

**I. Binding Effect of Agreement.**

This Agreement shall be binding upon and inure to the benefit of the Parties and their representatives, heirs, successors, and assigns.

**J. Nullification.**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Parties mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

**K. Extensions of Time.**

The Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Agreement, without further notice (subject to Court approval as to Court dates).

**L. Service or Notice.**

Whenever, under the terms of this Agreement, a person is required to provide service or written notice to Plaintiff, Class Counsel, Harley-Davidson or Harley-Davidson's counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Parties in writing:

As to Plaintiff and/or Class Counsel:                      Ross H. Hyslop, Esq.  
Pestotnik LLP  
501 W. Broadway, Suite 1025  
San Diego, CA 92101  
(619) 237-3000  
[hyslop@pestotnik.com](mailto:hyslop@pestotnik.com)

As to Harley-Davidson and/or its counsel:                      Paul L. Nystrom, Esq.  
Dykema Gossett PLLC  
39577 Woodward Avenue, Suite 300  
Bloomfield Hills, MI 48304  
(248) 203-0855  
[pnystrom@dykema.com](mailto:pnystrom@dykema.com)

**M. Authority to Execute Agreement.**

Each counsel or other person executing this Agreement or any of its exhibits on behalf of any Party hereto warrants that such person has the authority to do so.

**N. Tax Considerations**

Harley-Davidson makes no warranty or representation of tax consequences, if any, of this Agreement or its terms. Plaintiff and Class Counsel acknowledge and agree that they are solely responsible for the payment of any and all federal, state, city or local taxes which might be due and owing as a result of any term contained in this Agreement. The Parties acknowledge that no tax advice has been offered or given by any Party, their attorneys, agents or any other

representatives, in the course of the negotiations, and the Parties are relying upon their own judgment or the advice of their own tax consultant(s) with regard to any tax consequences that may arise as a result of this Agreement. Plaintiff and Class Counsel understand and agree that despite any other provision of this Agreement, Harley-Davidson and its attorneys are authorized to report all payments made pursuant to this Agreement to the Internal Revenue Service and other local, state and federal taxing authorities. The Parties agree to provide documentation to allow each Party to comply with its obligations under applicable tax laws, if requested.

**O. Disclaimer of Liability**

Plaintiff and Class Counsel agree that they have accepted payment of the sums herein as a compromise of matters involving disputed issues of law and fact, and they assume the risk that facts or the law may be otherwise than they believe. It is understood and agreed by the Parties that this Agreement is a compromise of disputed claims, and that the consideration required herein is not to be construed as an admission of liability or responsibility on the part of Harley-Davidson or any of the Released Parties, which expressly deny all liability. Neither the consideration specified in this Agreement nor the negotiations pertaining to this Agreement (including all statements and communications, oral or written, of any nature) by any Party, their attorneys, agents or representatives, are admissions by them, and no past or present negligent act or omission or other wrongdoing may be implied by or inferred from such consideration or negotiations.

**P. Warranties and Representations**

Plaintiff represents and warrants that:

1. Plaintiff is the sole and lawful owner of all right, title and interest in and to every claim and other matter which Plaintiff releases in this Agreement and that Plaintiff has not previously assigned or transferred, or purported to do so, to any person or other entity any right, title or interest in any such claim or other matter.

2. Plaintiff assumes the risk that the facts or law may be other than what Plaintiff believes, regardless of the cause.
3. Plaintiff has completely read the terms and conditions of this Agreement and the terms and conditions are fully understood and voluntarily accepted. Plaintiff is fully aware of the terms, conditions, and effects of this Agreement.
4. Plaintiff has either personally or through Plaintiff's attorneys fully investigated, to Plaintiff's full satisfaction, all the facts surrounding the various claims, controversies, and disputes and is fully satisfied with the terms and effects of this Agreement.
5. Plaintiff is of legal age and is legally competent to execute this Agreement and Plaintiff accepts full responsibility therefore.
6. Plaintiff acknowledges that no promise, assurance, representation, inducement or agreement not herein expressed has been made to Plaintiff in executing this Agreement. Plaintiff is not relying upon any statement or representation of Harley-Davidson, or its agents or attorneys, whether made before, after or in the process of negotiating or finalizing this Agreement, and this Agreement constitutes the entire agreement between Plaintiff and Harley-Davidson.
7. Plaintiff acknowledges that Plaintiff has carefully reviewed this Agreement with Plaintiff's attorneys, understands its content, has executed it freely and voluntarily, and has the capacity to understand it and enter into it. Plaintiff further acknowledges that Plaintiff has had the advice of counsel of Plaintiff's own choosing in reviewing and entering into this Agreement. Plaintiff represents and warrants that Plaintiff is relying on Plaintiff's own judgment and that of Class Counsel in deciding to enter into this Agreement.

Class Counsel represents and warrants that he and/or Pestotnik LLP are the sole and lawful owner(s) of all right, title and interest in and to all fees and expenses released in this Agreement and that neither he nor Pestotnik LPP has previously assigned or transferred, or purported to do so, to any person or other entity any right, title or interest in any such fees or costs or claims therefore.

**Q. Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed to be an original of this Agreement with the same force and effect. A photocopy of a fully executed

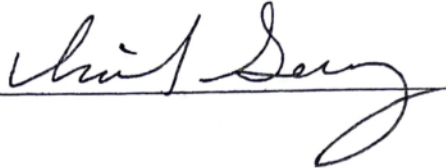
counterpart of this Agreement, or of a set of identical versions separately executed by the Parties, shall be valid evidence of the existence and the terms of this Agreement.

**R. Construction by State Law**

This Agreement shall be construed and interpreted in accordance with California law.

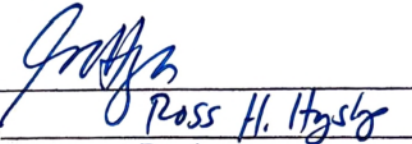
ISAIAH GOMEZ

Dated: 12-January, 2022



PESTOTNIK, LLP

Dated: January 14, 2022

  
By: Ross H. Hyslop  
Its: Partner

HARLEY-DAVIDSON

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

DYKEMA GOSSETT PLLC

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

counterpart of this Agreement, or of a set of identical versions separately executed by the Parties, shall be valid evidence of the existence and the terms of this Agreement.

**R. Construction by State Law**

This Agreement shall be construed and interpreted in accordance with California law.

ISAIAH GOMEZ

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_

PESTOTNIK, LLP

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

HARLEY-DAVIDSON

Dated: 01 / 13, 2022

  
\_\_\_\_\_

By: JOCHEN ZEITZ

Its: PRESIDENT AND CEO

DYKEMA GOSSETT PLLC

Dated: 01/13, 2022

  
\_\_\_\_\_

By: Paul L. Nystrom

Its: Counsel

# Exhibit A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FINAL APPROVAL HEARING**

*Gomez et al v. Mycles Cycles, Inc. et al.*  
**San Diego County Superior Court**  
**Case no. 37-2015-00043311-CU-BT-CTL**

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**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. THIS NOTICE  
CONTAINS IMPORTANT INFORMATION ABOUT A PROPOSED  
CLASS ACTION SETTLEMENT. YOUR RIGHTS MAY BE AFFECTED  
BY THE PROPOSED SETTLEMENT.**

*A Court authorized this notice. This is not a solicitation from a lawyer.*

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**THIS NOTICE AFFECTS YOUR RIGHTS**

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TO: All consumers (1) who purchased or leased a new, assembled Harley-Davidson motorcycle from Mycles Cycles, Inc. dba San Diego Harley-Davidson (“San Diego Harley-Davidson” or “SDHD”) from December 30, 2011 through February 14, 2020; (2) who were previously sent notice of this class action litigation by KCC, and (3) who did not timely opt out after class notice was sent to them (“Settlement Class Members”).

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You are receiving this Notice because you are likely to be a Settlement Class Member as described above. You are receiving this Notice pursuant to a proposed Settlement in a class action lawsuit entitled *Isaiah Gomez, an individual, on behalf of himself, the proposed class(es), all others similarly situated, and on behalf of the general public, Plaintiff v Mycles Cycles, Inc., et al.*, which is pending in the California Superior Court for the County of San Diego (the “Court”), Case No. 37-2015-00043311-CU-BT-CTL (the “Lawsuit”). The proposed Settlement was given preliminary approval by the Court. The purpose of this Notice is to provide an explanation of the proposed Settlement, and to explain the procedures relating to the Final Approval Hearing. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable, and any final determination of those issues will be made at the Final Approval Hearing. If you wish to be included in the Settlement, you do not have to do anything to indicate your consent. If you wish to be excluded from the Settlement, follow the instructions in this Notice.



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## WHAT'S THIS ABOUT?

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The Settlement will resolve the Lawsuit as between Isaiah Gomez, on behalf of himself, the Subclass, the Settlement Class, all others similarly situated, and on behalf of the general public (“Plaintiff”), on the one hand, and Defendants Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson Motor Company Operations, Inc. (“Harley-Davidson”), on the other hand. The Settlement does not settle or resolve any claims of Plaintiff or a previously certified class against the dealer, Defendant Mycles Cycles, Inc. dba San Diego Harley-Davidson (“MCI” or “SDHD”).

In this case, Plaintiff alleges: (1) that Harley-Davidson furnished illegal and/or non-compliant price hang tags to its California dealers, including but not limited to SDHD, that allegedly failed to comply with or violated the California Vehicle Code and other laws, regulations and requirements, did not submit its motorcycle price hang tags for review and approval by the California Department of Motor Vehicles (“DMV”), and/or improperly permitted dealers to create and/or modify motorcycle price hang tags in a misleading manner (“Hang Tag Claims”); and (2) that Harley-Davidson represented in certain advertising that “setup fees” were excluded from MSRP even though California law requires manufacturers like Harley-Davidson to specify (for the dealer) pre-delivery tasks and compensate/reimburse dealers for performing such tasks, and that Harley-Davidson did in fact specify its pre-delivery tasks to dealers and compensate/reimburse dealers for such specified pre-delivery tasks, and certain consumers who purchased new motorcycles were allegedly routinely charged fees by the dealer for the same tasks, as “setup” or “dealer preparation” (“Setup Fees Claims”). Harley Davidson denies Plaintiff’s claims.

As against Harley-Davidson, the Court certified a class to litigate the Hang Tag Claims, and notice of the certified class was sent to all consumers who purchased or leased a new, assembled Harley-Davidson motorcycle from SDHD from December 30, 2011 through February 14, 2020. (As against the dealer, SDHD, the Court also certified a class to litigate the Hang Tag Claims, but the class claims against SDHD are not being settled or resolved through this proposed settlement, and instead are currently scheduled to go to trial in **XX**, 2022.)

After this initial notice was sent, Plaintiff and Harley-Davidson concluded that it is in their best interests to settle the Lawsuit between them to avoid the expense and uncertainty of ongoing litigation. The proposed Settlement was negotiated with Harley-Davidson by the attorneys for the Settlement Class (“Class Counsel”). Class Counsel believes that this Settlement is in the best interests of the members of the Settlement Class. The Court has not made any decision on the merits of the case and did not decide which side was right, but both sides agreed to the Settlement.

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## WHAT ARE YOUR RIGHTS AND OPTIONS ?

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<b>Your Legal Rights and Options in this Settlement</b>	
Do Nothing	If you do nothing, you will be bound by the Settlement Agreement and the release of claims described in this Notice and the Settlement Agreement. To become eligible to receive a Rebate, you will have to comply with all of the requirements described below on pages 4-6 of this Notice under "Rebates." See below for additional information and requirements.
Exclude Yourself	You may exclude yourself from the Settlement by timely submitting a completed and signed Request for Exclusion Form. If you properly exclude yourself from the Settlement, you will not be eligible to receive a Rebate. You will retain the claims that will be released by members of the Settlement Class. See below for additional information and requirements.
Object	You are entitled to submit a timely written objection to the Settlement. If the Settlement Agreement is approved after your objection, you will remain a member of the Settlement Class and will be bound by the release of claims described in this Notice and the Settlement Agreement. See below for additional information and requirements.

**These rights and options and the deadlines to exercise them are explained in this Notice. The Court in charge of this case still has to decide whether to approve the settlement. Unless you exclude yourself from the Settlement, you will be bound by the terms of the Settlement Agreement.**

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### WHO IS IN THE SETTLEMENT CLASS?

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The Settlement Class includes all consumers (1) who purchased or leased a new, assembled Harley-Davidson motorcycle from San Diego Harley-Davidson from December 30, 2011 through February 14, 2020; (2) who were previously sent notice of this class action litigation by KCC, and (3) who did not timely opt out after class notice was sent to them.

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### SUMMARY OF THE PROPOSED SETTLEMENT

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The Court has preliminarily approved the proposed Settlement. If the Court grants final approval, the terms of the Settlement Agreement will be the binding terms of the Settlement, and all such terms are set forth in the Settlement Agreement that is on file with the Court, which can also be found at [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com) where you may review it.

## 1. Injunctive Relief

As part of the Settlement, and if the Court provides final approval of the Settlement and enters a Final Approval Order and Judgment which becomes Final, Harley-Davidson has agreed to an injunction, which is a court order that requires Harley-Davidson to do or refrain from doing the following things:

- For five (5) years following the Effective Date of Settlement, Harley-Davidson, in any advertising or marketing materials intended for consumers that provide information about the MSRP of motorcycles, including on Harley-Davidson's website, will continue using the language that Harley-Davidson currently uses in these materials that states that Harley-Davidson reimburses dealers for performing manufacturer-specified pre-delivery inspection and setup tasks, or similar language.
- Harley-Davidson will permanently prevent Harley-Davidson authorized dealers located in California from being able to download from Harley-Davidson's hang tag creation process hang tags for new Harley-Davidson motorcycles previously referred to as Basic, Customizable and Factory Custom hang tags.
- Harley-Davidson will permanently prevent Harley-Davidson authorized dealers located in California from being able to use Harley-Davidson's hang tag creation process to modify MSRP information provided by Harley-Davidson on California VIN hang tags for both the price of the motorcycle and the price of manufacturer-installed options/accessories.
- Harley-Davidson will continue to submit representative samples of the hang tags it makes available to its Harley-Davidson authorized dealers located in California for use on new Harley-Davidson motorcycles to the California Department of Motor Vehicles for its approval in accordance with directions and instructions provided by the DMV.

In the event certain injunctive relief or an action required is contrary to or prohibited by any applicable law, regulation or legal requirement, including as a result of a change in the law or application of the law, Harley-Davidson will not be obligated to comply with the particular injunctive relief term or take the action required by it only to the extent it is prohibited by or violates applicable law.

## 2. Rebates

If the Court provides final approval of the Settlement and enters a Final Approval Order and Judgment which has become Final, Harley-Davidson will provide a Rebate to Settlement Class Members who purchase a New Harley-Davidson® Motorcycle (not previously titled) from an authorized Harley-Davidson dealer located in the United States if 1) the motorcycle is purchased after the Final Approval Order and Judgment are entered by the Court following the Final Approval Hearing ("Final Approval Date"), 2) the motorcycle is purchased within one year after the Final Approval Date, 3) the required Motorcycle Rebate Claim Form and Bill of Sale are received by JND Legal Administration no later than one year after the Final Approval Date, and by 5:00 p.m.

Pacific Time on the last day of the one year period, AND 4) the requirements described in (1)-(5) below and on pages 4-6 of this Notice are satisfied, subject to the terms and conditions set forth in this Notice and the Settlement Agreement. Rebates are non-transferrable. A Settlement Class Member may not receive more than one Rebate. The amount of the Rebate will depend on the Purchase Price of the New Harley-Davidson® Motorcycle that is purchased by the Settlement Class Member, as follows:

- \$400 for the future purchase of a New Harley-Davidson® Motorcycle where the Purchase Price for the New Harley-Davidson® Motorcycle is \$20,000 or less.
- \$500 for the future purchase of a New Harley-Davidson® Motorcycle where the Purchase Price for the New Harley-Davidson® Motorcycle is \$20,001 - \$25,000.
- \$600 for the future purchase of a New Harley-Davidson® Motorcycle where the Purchase Price for the New Harley-Davidson® Motorcycle is more than \$25,000.

“Purchase Price” means the cash price for a New Harley-Davidson® Motorcycle and excludes tax, title, service or maintenance contracts, license, documentation charges or fees, freight charges or fees, and other charges or fees.

In order to obtain a Rebate, and to become eligible to receive one, a Settlement Class Member must do all of the following:

- (1) Purchase a New Harley-Davidson® Motorcycle (not previously titled) from an authorized Harley-Davidson dealer located in the United States after the Final Approval Date. The Final Approval Date will be posted on [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com) once that date has been determined;
- (2) Following the purchase of a New Harley-Davidson® Motorcycle described in (1) above, completely fill out the Motorcycle Rebate Claim Form that has been provided with this Notice. All of the information requested in the form must be provided so that the information is legible, and the form must be signed and dated;
- (3) Send both the completed and legible Motorcycle Rebate Claim Form and a legible copy of the Bill of Sale for the New Harley-Davidson® Motorcycle to JND Legal Administration at the following address identified in the form:

JND Legal Administration  
[address]

- (4) The information in the Motorcycle Rebate Claim Form must match the information in the Bill of Sale; and
- (5) The Motorcycle Rebate Claim Form and Bill of Sale must be received by JND Legal Administration no later than one year after the Final Approval Date, and by 5:00 p.m. Pacific Time on the last day of the one year period. The Final Approval Date will be posted on [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com) once that date has been determined.

If these requirements are satisfied, the Final Approval Order and Judgment has become Final (as defined in the Settlement Agreement), and the Settlement Class Member is eligible to receive a Rebate, JND Legal Administration will send a check by U.S. Mail to the address provided in the Motorcycle Rebate Claim Form within 60 days of its receipt of the compliant Motorcycle Rebate Claim Form and Bill of Sale or the Effective Date of Settlement (as defined in the Settlement Agreement), whichever is later.

If the Final Approval Order and Judgment does not become Final (as defined in the Settlement Agreement), no Rebates will be provided even if the actions described in (1)-(5) above were taken and a New Harley-Davidson® Motorcycle was purchased. It may not become Final based on certain actions that could be taken to challenge the Settlement and/or Final Approval Order and Judgment. Please refer to the definition of “Effective Date of Settlement” on page 7 of the Settlement Agreement for more information.

Rebates will also not be provided if 1) the New Harley-Davidson Motorcycle is purchased before the Final Approval Date, 2) the New Harley-Davidson Motorcycle is purchased more than one year after the Final Approval Date, 3) the compliant and required Motorcycle Rebate Claim Form and Bill of Sale are not received by JND Legal Administration by the one year period after the Final Approval Date as described in (5) above, 4) any of the requirements of (1)-(5) above are not satisfied, or 5) the Settlement Class Member is not eligible for a Rebate according to the terms of the Settlement Agreement.

3. Payment to Plaintiff Isaiah Gomez

At the Final Fairness Hearing, Plaintiff will request that the Court approve payment to Named Plaintiff and class representative Isaiah Gomez of a service fee not to exceed \$30,000. Harley-Davidson has agreed not to oppose this amount.

No Rebates or payments to Named Plaintiff, Settlement Class Members or Class Counsel will be required or made until after the Effective Date of Settlement as defined in the Settlement Agreement.

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**INFORMATION ABOUT THE LAWYERS REPRESENTING YOU**

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The Class is represented by Ross H. Hyslop, Pestotnik LLP, 501 West Broadway, Suite 1025, San Diego, CA 92101, who is called Class Counsel. You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense.

Under the terms of the Settlement, Class Counsel will request at the Final Fairness Hearing that the Court approve attorneys’ fees and costs/expenses in an amount to be approved by the Court, not to exceed a total of \$1,650,000. Harley-Davidson has agreed not to oppose this amount.

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## RELEASE OF ALL CLAIMS

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If the Court approves the Settlement, Plaintiff, the Named Plaintiff, and all members of the Settlement Class who have not validly and timely requested to be excluded from the Settlement shall be deemed to have and will have released, waived and forever discharged Harley-Davidson and the Released Parties of and from the Released Claims and Unknown Claims as defined below:

“Released Claims” means any and all claims asserted in the Action by Plaintiff individually and, as applicable, the Subclass and Settlement Class, all other claims, demands, actions, and causes of action of any nature whatsoever arising from the facts alleged in the SAC [Second Amended Complaint], including, but not limited to, any claim for violations of federal, state, or other law (whether in contract, tort, or otherwise, including statutory and injunctive relief, common law, property, warranty and equitable claims), and also including any claims arising from the facts alleged in the SAC that could have been or could be asserted by Plaintiff or the Settlement Class Members against the Released Parties in the Action, or in any other complaint, action, or litigation in any other court or forum, including but not limited to claims based upon alleged unfair competition, false advertising, unfair business practices, violations of the Consumer Legal Remedies Act, or violations of any federal, state, local, statutory, or common law, including both known and unknown claims, that could have been or could be asserted against any of the Harley-Davidson Defendants or a Released Party in any forum by Plaintiff or any Settlement Class Member or any of them, or their heirs, successors, or assigns or any of them.

“Unknown Claims” means any and all Released Claims that any Settlement Class Member does not know to exist against any of the Released Parties and that, if known, might have affected his or her decision to enter into or to be bound by the terms of this Agreement.

“Released Parties” means Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson Motor Company Operations, Inc., and their past and present directors, officers, employees, partners, principals, agents, heirs, executors, administrators, successors, reorganized successors, subsidiaries, divisions, parents, related or affiliated entities, underwriters, insurers, coinsurers, re-insurers, licensees, divisions, joint ventures, assigns, associates, attorneys, and controlling shareholders.

The Settlement Agreement further provides that:

As to the foregoing release of the Released Claims and Unknown Claims only, Plaintiff agrees this Release shall constitute a general release and waiver which includes, without limitation, an express waiver to the fullest extent permitted by law by Plaintiff and the Settlement Class Members of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
THAT THE CREDITOR OR RELEASING PARTY DOES NOT  
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**FOR CLARITY, THE CLASS IS PROVIDING A “GENERAL RELEASE” TO THE RELEASED PARTIES SOLELY REGARDING THE RELEASED CLAIMS AND UNKNOWN CLAIMS (AS DEFINED HEREIN).**

The Release will not operate to release SDHD from potential liability.

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## WHAT ARE YOUR OTHER OPTIONS ?

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### Right To Be Excluded From The Settlement

Any Class Member who wants to exclude himself or herself from the Settlement Class and not be bound by the Settlement Agreement may make a written request for exclusion using the enclosed Request for Exclusion Form and submit the request to the Class Notice Administrator, KCC Class Action Services LLC (“KCC). The Request for Exclusion Form must be postmarked by [DATE] or received by KCC by [DATE PLUS 7 DAYS]. The Request for Exclusion Form must be personally signed by the person making the request and by all other persons who own to any extent the motorcycle for which exclusion is sought.

If a timely, compliant and complete request for exclusion is not submitted, and the Court grants final approval to the Settlement at the Final Fairness Hearing, you will be bound by the Settlement Agreement and the Final Approval Order and Judgment entered in the Lawsuit. You will also be prevented from pursuing any individual claims against Harley-Davidson and the Released Parties based upon the facts alleged in the Second Amended Complaint in the Lawsuit.

### Right To Object To The Settlement

If you do not request exclusion from the Settlement, you may object to the Settlement. To object, you must prepare a written objection and send it to the Class Notice Administrator, KCC Class Action Services LLC, at [ADDRESS]. It must be postmarked by [DATE]. The written objection must include your name, address, and phone number. You must also provide an explanation for the objection. The objection must be personally signed by you and dated. If you are represented by legal counsel, the objection must also be signed by your counsel.

If you fail to make a timely objection that complies with these requirements, you will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or any other process) to the Settlement and/or Settlement Agreement.

If the Court ultimately approves of the Settlement, you will be bound by the final judgment in the lawsuit even if you submitted a timely objection. If the Court ultimately approves of the settlement, you will (unless you submitted a valid and timely written request for exclusion to KCC) also be prevented from pursuing any individual claims against Harley-Davidson based on the facts alleged in the Second Amended Complaint.

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## **FINAL FAIRNESS HEARING**

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A hearing to decide whether to finally approve the Settlement has been scheduled for \_\_\_\_, 2022 at \_\_\_ a.m./p.m., before the Honorable Gregory W. Pollack, in Department C-71 of the California Superior Court for the County of San Diego, located at 330 W Broadway, San Diego, California 92101.

The Court will conduct an inquiry into the fairness of the proposed Settlement. It is possible that the date and/or time of the hearing could be changed. If you plan to attend, please confirm the date and time by visiting [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com) where any changes will be posted. If the Court grants final approval of the Settlement, the Final Approval Order and Judgment will be posted on [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com).

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## **ADDITIONAL INFORMATION**

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The above description of the Lawsuit is general in nature. To see the complete file, you may visit the office of the Clerk of the San Diego County Superior Court at 330 W Broadway, San Diego, California 92101. The Clerk will make the Lawsuit's file available for inspection and copying at your own expense.

The Settlement Agreement, as well as other legal papers related to the Settlement and the Court's consideration of it, can also be viewed online at [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com).

### **PLEASE DO NOT CALL OR WRITE THE COURT WITH QUESTIONS ABOUT THIS LAWSUIT.**

However, you may write to Class Counsel if you wish to obtain further information. Class Counsel can be reached at: Ross H. Hyslop, Pestotnik LLP, 501 West Broadway, Suite 1025, San Diego, CA 92101. You can also call Class Counsel at (619) 237-3000.



## Exhibit B

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THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO

ISAAH GOMEZ, an individual, on behalf of himself, the proposed class(es), all others similarly situated, and on behalf of the general public

Plaintiff,

v.

MYCLES CYCLES, INC., a California corporation, dba SAN DIEGO HARLEY-DAVIDSON; HARLEY-DAVIDSON, INC., a Wisconsin corporation; HARLEY-DAVIDSON MOTOR COMPANY, INC., a Wisconsin corporation; HARLEY-DAVIDSON MOTOR COMPANY OPERATIONS, INC., a Wisconsin corporation; and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2015-00043311-CU-BT-CTL

**[IMAGED]**

**CLASS ACTION**

**[PROPOSED] JUDGMENT AND FINAL ORDER AS TO DEFENDANTS HARLEY-DAVIDSON, INC., HARLEY-DAVIDSON MOTOR COMPANY, INC. AND HARLEY-DAVIDSON MOTOR COMPANY OPERATIONS, INC.:**

- 1. GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- 2. CERTIFYING CLASS FOR PURPOSES OF CLASS ACTION SETTLEMENT;**
- 3. AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL;**
- 4. APPROVING PAYMENT TO PLAINTIFF AND CLASS REPRESENTATIVE ISAAH GOMEZ; AND**
- 5. DIRECTING CONSUMMATION OF SETTLEMENT**

**Judge: Gregory W. Pollack  
Department: 71**

**Unlimited Civil Case**

**Complaint Filed: December 30, 2015  
FAC Filed: January 28, 2016  
SAC Filed: February 24, 2017  
Trial Date: March 4, 2022**

1 On \_\_\_\_\_, 2022 at 8:30 a.m., in Department 71 of the  
2 above-entitled court, located at 330 West Broadway, San Diego, California 92101, Judge Gregory  
3 W. Pollack presiding, Plaintiff ISAAH GOMEZ, on behalf of himself, the Subclass, the  
4 Settlement Class, all others similarly situated, and on behalf of the general public (“Plaintiff”),  
5 having moved unopposed for final approval of a class action settlement between Plaintiff and  
6 Defendants Harley-Davidson, Inc., Harley-Davidson Motor Company, Inc., and Harley-Davidson  
7 Motor Company Operations, Inc., (collectively, “Harley-Davidson”) pursuant to California Rules  
8 of Court Rule 3.769, and finding no objections were filed or presented to the Court, the Court  
9 finds good cause to grant the motion for final approval of the class action settlement and enter  
10 judgment. Defendant Mycles Cycles, Inc. dba San Diego Harley-Davidson (“MCI”) is not a party  
11 to the class action settlement or this Judgment, and shall not be affected or impacted by entry of  
12 this Judgment against Harley-Davidson.

13 Good cause appearing, it is hereby ordered, adjudged and decreed that:

14 1. For purposes of this Judgment and Final Order granting final approval of the class  
15 action settlement between Plaintiff and Harley-Davidson, the Court adopts all defined terms as set  
16 forth in the Settlement Agreement dated \_\_\_\_\_, 2022 (“Settlement Agreement”),  
17 which is attached as Exhibit 4 to the January 17, 2022 Declaration of Ross H. Hyslop in support of  
18 Plaintiff’s motion for preliminary approval. The Settlement Agreement is incorporated by  
19 reference herein.

20 2. The Court has jurisdiction over the subject matter of this Action, and over all  
21 parties to the Action, including all Settlement Class Members.

22 3. The Court finds that the Settlement has been reached as a result of extensive,  
23 serious, and non-collusive arms’ length negotiations. The Court further finds that the Parties have  
24 conducted extensive and costly investigation, discovery and research and counsel for the Parties  
25 are able to reasonably evaluate their clients’ respective positions. The Court also finds that  
26 settlement at this time will avoid additional substantial fees and costs, and avoid the delay and  
27 risks that would result from the further litigation of the Action. The Court has reviewed the terms  
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1 of the injunctive relief and Rebates that are to be provided as part of the Settlement and recognizes  
2 their significant value to the Settlement Class and members of the general public.

3 4. The Court approves the settlement of this litigation as set forth in the Settlement  
4 Agreement as being fair, reasonable and adequate to the Settlement Class Members. The Court is  
5 independently satisfied based upon the evidence that the consideration being received for the  
6 release of the Settlement Class Members' claims set forth in the Settlement Agreement is  
7 reasonable in light of the strengths and weaknesses of the claims and the risks of the litigation, and  
8 that the Settlement was not collusive.

9 5. For purposes of this Judgment and Order, and consistent with the Settlement  
10 Agreement, the Settlement Class shall consist of and shall be defined as follows: All consumers  
11 (1) who purchased or leased a new, assembled Harley-Davidson motorcycle from Mycles Cycles,  
12 Inc. dba San Diego Harley-Davidson ("San Diego Harley-Davidson" or "SDHD") from December  
13 30, 2011 through February 14, 2020; (2) who were previously sent notice of this class action  
14 litigation by KCC, and (3) who did not timely opt out after class notice was sent to them. While  
15 the class as defined in the first clause was previously certified as to SDHD only, the Court hereby  
16 also certifies this Class for settlement purposes only as to Harley-Davidson.

17 6. With respect to the Settlement Class, the Court finds that: (a) the class is  
18 ascertainable; (b) the class members are so numerous that joinder of all class members in the  
19 action is impracticable; (c) there are questions of law and fact common to the class that  
20 predominate over any individual questions; (d) the claims of plaintiff are typical of the claims of  
21 the class; (e) plaintiff and class counsel have fairly and adequately represented and protected the  
22 interests of all class members and it appears they will continue to do so; and (f) a class action is  
23 superior to other available methods for the fair and efficient adjudication of the action.

24 7. Having previously approved and appointed Plaintiff Isaiah Gomez to serve as class  
25 representative, and Pestotnik LLP and attorney Ross H. Hyslop to serve as Class Counsel, the  
26 Court hereby confirms such appointments and has authorized them to act on behalf of Settlement  
27 Class Members with respect to all acts or consents required by, or which may be given pursuant  
28 to, the Settlement, and such other acts reasonably necessary to consummate the Settlement.

1           8.       The Class Notice provided to the Settlement Class constitutes full and adequate  
2 notice and is in full compliance with the requirements of California law and due process of law.

3           9.       The Settlement shall be implemented and consummated in accordance with the  
4 terms of the Settlement Agreement.

5           10.      Harley-Davidson will pay Named Plaintiff Isaiah Gomez, as a class representative  
6 service fee, the amount of \$\_\_\_\_\_. The payment will be made by wire within fourteen (14)  
7 business days after the Effective Date. Named Plaintiff will provide a W-9 and wiring instructions  
8 to Harley-Davidson's counsel before the Effective Date.

9           11.      Harley-Davidson will provide a Rebate to each Settlement Class Member that  
10 purchases a New Harley-Davidson® Motorcycle in accordance and in compliance with the terms,  
11 conditions and process set forth in the Settlement Agreement.

12                a.       Each Settlement Class Member will be entitled to one Rebate after the  
13 future purchase of a New Harley-Davidson® Motorcycle regardless of the number of  
14 Harley-Davidson® motorcycles the Settlement Class Member previously purchased that  
15 caused the Settlement Class Member to become a member of the Subclass and/or MCI  
16 Class.

17                b.       The New Harley-Davidson® Motorcycle must be purchased after the Final  
18 Approval Date. The Final Approval Date will be posted on the Settlement Website, which  
19 is [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com).

20                c.       Rebates are non-transferrable. Only Settlement Class Members are eligible  
21 to receive a Rebate.

22                d.       Rebate Claims must be submitted using the Motorcycle Rebate Claim Form  
23 sent to Settlement Class Members with the Class Notice. In order to receive a Rebate, the  
24 Motorcycle Rebate Claim Form and Bill of Sale must be received by the Rebate Claims  
25 Administrator no later than one year from the Final Approval Date, and by 5:00 p.m.  
26 Pacific Time on the last day.

1 e. The amount of the Rebate depends on the Purchase Price of the New  
2 Harley-Davidson® Motorcycle purchased by the Settlement Class Member after the Final  
3 Approval Date, as follows:

- 4 • \$400 for the future purchase of a New Harley-Davidson® Motorcycle where the  
5 Purchase Price for the New Harley-Davidson Motorcycle is \$20,000 or less.
- 6 • \$500 for the future purchase of a New Harley-Davidson® Motorcycle where the  
7 Purchase Price for the New Harley-Davidson Motorcycle is \$20,001 - \$25,000.
- 8 • \$600 for the future purchase of a New Harley-Davidson® Motorcycle where the  
9 Purchase Price for the New Harley-Davidson Motorcycle is more than \$25,000.

10 The Purchase Price means the cash price for a New Harley-Davidson® Motorcycle and  
11 excludes tax, title, service or maintenance contracts, license, documentation charges or  
12 fees, freight charges or fees, and other charges or fees.

13 f. In order to obtain a Rebate, and to become eligible to receive one, a  
14 Settlement Class Member must do all of the following:

- 15 1. Purchase a New Harley-Davidson® Motorcycle from an authorized Harley-  
16 Davidson dealer located in the United States after the Final Approval Date;
- 17 2. Following the purchase of a New Harley-Davidson® Motorcycle described  
18 in 1. above, the Settlement Class Member must completely fill out the  
19 Motorcycle Rebate Claim Form included with the Class Notice by providing  
20 all of the information requested in the form so that the information is legible,  
21 and sign and date the form;
- 22 3. The Settlement Class Member must send both the completed and legible  
23 Motorcycle Rebate Claim Form and a legible copy of the Bill of Sale for the  
24 New Harley-Davidson® Motorcycle to the Rebate Clams Administrator,  
25 JND Legal Administration (“JND”), at the following address identified in the  
26 form:

27 JND Legal Administration  
28 [address]

1 4. The information in the Motorcycle Rebate Claim Form must match the  
2 information in the Bill of Sale; and

3 5. The Motorcycle Rebate Claim Form and Bill of Sale must be received by  
4 JND no later than one year from the Final Approval Date, and by 5:00 p.m.  
5 Pacific Time on the last day of the one year period. The Final Approval  
6 Date will be posted on [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com).

7 g. If a Settlement Class Member satisfies these requirements and is eligible to  
8 receive a Rebate, JND will send a check by U.S. Mail to the Settlement Class Member to  
9 the address provided in the Motorcycle Rebate Claim Form within 60 days of JND's  
10 receipt of the compliant Motorcycle Rebate Claim Form and Bill of Sale or the Effective  
11 Date of Settlement, whichever is later.

12 12. Harley-Davidson will pay all expenses associated with KCC providing Class  
13 Notice to the Settlement Class Members and will bear all costs and expenses related to the  
14 administration of the Rebates by JND.

15 13. Harley-Davidson stipulates to the following injunctive relief:

16 a. For five (5) years following the Effective Date of Settlement, Harley-  
17 Davidson, in any advertising or marketing materials intended for consumers that provide  
18 information about the MSRP of motorcycles, including on Harley-Davidson's website, will  
19 continue using the language that Harley-Davidson currently uses in these materials that  
20 states that Harley-Davidson reimburses dealers for performing manufacturer-specified pre-  
21 delivery inspection and setup tasks, or similar language.

22 b. Harley-Davidson will permanently prevent Harley-Davidson authorized  
23 dealers located in California from being able to download from Harley-Davidson's hang  
24 tag creation process hang tags for new Harley-Davidson motorcycles previously referred to  
25 as Basic, Customizable and Factory Custom hang tags.

26 c. Harley-Davidson will permanently prevent Harley-Davidson authorized  
27 dealers located in California from being able to use Harley-Davidson's hang tag creation  
28 process to modify MSRP information provided by Harley-Davidson on California VIN

1 hang tags for both the price of the motorcycle and the price of manufacturer-installed  
2 options/accessories.

3 d. Harley-Davidson will continue to submit representative samples of the hang  
4 tags it makes available to its Harley-Davidson authorized dealers located in California for  
5 use on new Harley-Davidson motorcycles to the California Department of Motor Vehicles  
6 for its approval in accordance with directions and instructions provided by the DMV.

7 e. In the event certain injunctive relief or an action required in this paragraph  
8 is contrary to or prohibited by any applicable law, regulation or legal requirement,  
9 including as a result of a change in the law or application of the law, Harley-Davidson will  
10 not be obligated to comply with the particular injunctive relief term or take the action  
11 required by it only to the extent it is prohibited by or violates applicable law.

12 14. Attorney fees and litigation costs/expenses in the total amount of \$ \_\_\_\_\_  
13 are awarded to Class Counsel and shall be paid by Harley-Davidson by wire to the Pestotnik LLP  
14 trust account within fourteen (14) business days after the Effective Date of Settlement. Class  
15 Counsel will provide to Harley-Davidson's counsel a W-9 and wiring instructions prior to the  
16 Effective Date of Settlement.

17 15. KCC will provide notice of this Judgment by placing it on  
18 [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com).

19 16. Neither the Settlement Agreement, the preliminary approval order, nor this  
20 Judgment and Order, nor any of their terms or provisions or negotiations or proceedings connected  
21 with them, shall be construed as an admission or concession by Harley-Davidson of the truth of  
22 any of the allegations in the Action, or of any liability, fault or wrongdoing of any kind. They  
23 shall not constitute, or be construed as, any admission of the validity of any claim or any fact  
24 alleged in the Action or of any wrongdoing, fault, non-compliance, violation of law, or liability of  
25 any kind on the part of Harley-Davidson or any admissions by Harley-Davidson of any claim or  
26 allegation made in any action or proceeding against Harley-Davidson. The consideration set forth  
27 in the Settlement Agreement, including the Rebates, injunctive relief, and payments, are being  
28 provided and are agreed to by Harley-Davidson only to resolve the Action. Harley-Davidson



1 denies any liability, that it has violated any laws, regulations or legal requirements, or that the  
2 injunctive relief it has agreed to is required or necessary to remedy any alleged violations. The  
3 Settlement Agreement shall not be offered or be admissible in evidence against Harley-Davidson  
4 in any action or proceeding, except in a proceeding brought by Plaintiff in this Action to enforce  
5 its terms.

6 17. Upon the Effective Date of Settlement, the Settlement Class shall have, by  
7 operation of this Order, fully, finally, and forever released, relinquished, and discharged Harley-  
8 Davidson and the Released Parties from the Released Claims and Unknown Claims on the terms  
9 and conditions stated in the Settlement Agreement. However, this Judgment does not settle or  
10 release any claims that have been or may be asserted in the future by any persons or entities who  
11 have validly and timely requested exclusion from the Settlement Class as provided for in the  
12 Settlement Agreement. Further, this Judgment shall not operate or be construed to release or  
13 discharge Defendant MCI in any respect; MCI shall not be affected or impacted by entry of this  
14 Judgment against Harley-Davidson.

15 18. Without affecting the finality of this Judgment in any way, and pursuant to the  
16 parties' request, as well as California Code of Civil Procedure section 664.6 and Rule 3.769(h) of  
17 the California Rules of Court, the Court reserves exclusive and continuing jurisdiction over the  
18 Class Representative and Named Plaintiff Isaiah Gomez, the Settlement Class Members, and  
19 Harley-Davidson for the purpose of supervising the implementation, enforcement, construction,  
20 and interpretation of the Settlement Agreement and this Judgment.

21  
22 **IT IS SO ORDERED.**

23 Superior Court for the State of California

24  
25 Dated:

26 Honorable Gregory W. Pollack

# Exhibit C

## MOTORCYCLE REBATE CLAIM FORM

*Gomez v. Harley-Davidson*  
Case no. 37-2015-00043311-CU-BT-CTL

You must provide all of the information requested in this form and it must be legible. Only motorcycle purchases made after the Final Approval Date are eligible for rebates. See [www.SDHDhangtaglitigation.com](http://www.SDHDhangtaglitigation.com) and the Class Notice that you received with this Form for details. Once completed, this form and a legible copy of the motorcycle bill of sale from your purchase of a new, not previously titled Harley-Davidson® motorcycle must be sent to the following address and it must be received by JND Legal Administration within one year of the Final Approval Date:

JND LEGAL ADMINISTRATION  
[]

**IMPORTANT: The information in this form must match the information in the supporting bill of sale.**

Full name: \_\_\_\_\_

Mailing address (where a rebate check should be sent): \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

### New Harley-Davidson Motorcycle Purchase Information

Model: \_\_\_\_\_ Model year: \_\_\_\_\_

Vehicle Identification Number (VIN): \_\_\_\_\_

Name of selling dealer: \_\_\_\_\_

Address of selling dealer: \_\_\_\_\_

Purchase price (the cash price for the motorcycle excluding tax, title, service or maintenance contracts, license, documentation or freight charges or fees, or other charges or fees): \$ \_\_\_\_\_

Date of purchase: \_\_\_\_\_

**By signing below, I declare that the information provided in this form is true and correct.**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Settlement Class Member Identification Number: \_\_\_\_\_

## Exhibit D

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**REQUEST FOR EXCLUSION FORM**

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If you wish to be excluded from the Settlement Class, you must complete, sign and date this form, and mail it to the Class Notice Administrator, KCC Class Action Services LLC, at the address below, post-marked no later than [DATE]. This form must also be signed by any person who also owns the motorcycle in addition to you.

[ADDRESS]

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**REQUEST TO BE EXCLUDED FROM CLASS ACTION SETTLEMENT**

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*Isaiah Gomez, an individual, on behalf of himself, the proposed class(es), all others similarly situated, and on behalf of the general public, Plaintiff v. Harley-Davidson, Inc., et al., in the Superior Court of California, County of San Diego, Case No. 37-2015-00043311-CU-BT-CTL.*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Motorcycle Vehicle Identification Number (VIN): \_\_\_\_\_

Co-owner name: \_\_\_\_\_

**IF YOU SEND THIS FORM, YOU WILL NOT BE A MEMBER OF THE SETTLEMENT CLASS, YOU WILL NOT RECEIVE A REBATE, YOU WILL BE EXCLUDED FROM THE SETTLEMENT, AND YOU WILL NOT BE BOUND BY THE TERMS OF THE SETTLEMENT AGREEMENT.**

I RECEIVED NOTICE OF THE CLASS SETTLEMENT. I REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THIS CASE.

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

Signed: \_\_\_\_\_

Co-owner of motorcycle (if any):

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

Signed: \_\_\_\_\_