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May 24, 2020

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SENT VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED & []

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[]
[]

Tel: (xxx) xxx-xxxx

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**Re: Claim No. : [Claim No.]
Our Client/Your Insured : [Client's Name]
Date of Loss : [Date of Accident]**

**CONFIDENTIAL AND PRIVILEGED SETTLEMENT COMMUNICATION &
UNDERINSURED MOTORIST DEMAND OR, ALTERNATIVELY, DEMAND FOR
ARBITRATION PURSUANT TO POLICY**

This letter is sent in furtherance of ongoing settlement negotiations and serves no other purpose. As such, this letter is confidential, privileged, and subject to Federal Rule of Evidence 408, California Evidence Code §1152, and all other applicable state or federal laws protecting settlement communications and offers of compromise

Dear Claims Department:

As you are aware, this office represents your insured, [Client's Name], who was injured on [Date of Accident], as a result of an automobile accident, caused by [Defendant's Name] (the "Underinsured Motorist"), who was underinsured at the time of collision.

The vehicle in which the Underinsured Motorist was driving was insured through [Insurance Company Name]. The Underinsured Motorist's policy limits were \$[Policy Limits] person, which have been paid. Please see the enclosed Defendant's confirmation of policy limits, in addition to the release signed by [Mr./Ms. Client's Name] and settlement check, attached hereto as Attachment "A." Unfortunately, the Underinsured Motorist's

policy limits were inadequate to fully and fairly compensate [Mr./Ms. Client’s Name] for [his/her] injuries.

In the interest of good faith, please allow this correspondence to serve as our Underinsured Motorist Settlement Demand Letter to provide compensation for [Mr./Ms. Client’s Name] for the accident that occurred on [Date of Accident], in addition to our formal Demand for Arbitration. The purpose of this letter is to maximize efforts to resolve this matter to the mutual satisfaction of all parties concerned. This settlement demand is based on the facts and issues of law enumerated below.

I. Liability

Liability against the Underinsured Motorist in the instant case is clear. “Everyone is responsible, not only for the results of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully, or by want of ordinary care, brought the injury upon himself.” This statute is the foundation of negligence law in California. *Rowland v. Christian* (1968) 69 Cal.2d 108, 111-112.

Rear End (if applicable): As corroborated by all parties and evidence, the Underinsured Motorist negligently and unlawfully rear-ended the vehicle driven by our client, in violation of California Vehicle Code Section 22350. At the time of the collision, our client was completely and lawfully stopped in [his/her] vehicle due to traffic in front of [him/her].

As stated in the Traffic Collision Report, included below as Attachment “[#],” “[Quote Traffic Collision Report (if applicable)].”

A collision in which a following motorist collides with the rear end of a vehicle ahead evidences negligence on the part of the following motorist. *Larson v. Solbakken* (1963), 221 CA 2d 473, 34 CR 450, 458. Such a collision indicates a violation of the basic speed law (Vehicle Code Section 22350) following another automobile too closely (Vehicle Code Section 21703), and inattentiveness of the driver. A motorist remains bound to anticipate that he may meet persons or vehicles at any part on the street and he must keep a proper lookout for them, always keeping his automobile under such control enabling him to avoid a collision. *Huetter v. Andrews* (1949), 91 CA 2d 142, 204 P 2 655. Moreover, failure to keep such a lookout or failure to see that which may be readily seen constitutes negligence as a matter of law. *Huetter v. Andrews* (supra).

Because the Underinsured Motorist violated California Vehicle Code section 22350, a statute designed to prevent unsafe driving maneuvers and accidents resulting therefrom, the Underinsured Motorist is negligent per se. California Evidence Code section 669 provides in pertinent part: (a) the failure of a person to exercise due care is presumed if: (1) he violated a statute, ordinance, or regulation of a public entity; (2) the violation

proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence of the nature which the statute, ordinance or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance or regulation was adopted.

Accordingly, the Underinsured Motorist acted negligently and in violation of statutory law, in addition to general negligence laws.

Lane Change (if applicable): As corroborated by all parties and evidence, the Underinsured Motorist carelessly, negligently and unlawfully made an extremely dangerous lane change in violation of California Vehicle Code Sections 22107 and 21658 and collided directly into our client’s vehicle.

As stated in the Traffic Collision Report, included below as Attachment “[#],” “[Quote Traffic Collision Report (if applicable)].”

Because the Underinsured Motorist violated California Vehicle Code sections 22107 and 21658, statutes designed to prevent unsafe driving maneuvers and accidents resulting therefrom, the Underinsured Motorist is negligent per se. California Evidence Code section 669 provides in pertinent part: (a) the failure of a person to exercise due care is presumed if: (1) he violated a statute, ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence of the nature which the statute, ordinance or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance or regulation was adopted.

Accordingly, the Underinsured Motorist acted negligently and in violation of statutory law, in addition to general negligence laws.

Intersection (if applicable): As corroborated by all parties and evidence, the Underinsured Motorist carelessly, negligently and unlawfully proceeded through an intersection on a red light, in violation of California Vehicle Code Section 22453, and collided directly into our client’s vehicle.

As stated in the Traffic Collision Report, included below as Attachment “[#],” “[Quote Traffic Collision Report (if applicable)].”

Because your insured violated California Vehicle Code section 22453, a statute designed to prevent unsafe driving maneuvers and accidents resulting therefrom, the Underinsured Motorist is negligent per se. California Evidence Code section 669 provides in pertinent part: (a) the failure of a person to exercise due care is presumed if: (1) he violated a statute,

ordinance, or regulation of a public entity; (2) the violation proximately caused death or injury to person or property; (3) the death or injury resulted from an occurrence of the nature which the statute, ordinance or regulation was designed to prevent; and (4) the person suffering the death or the injury to his person or property was one of the class of persons for whose protection the statute, ordinance or regulation was adopted.

Accordingly, the Underinsured Motorist acted negligently and in violation of statutory law, in addition to general negligence laws.

II. Summary of Injuries

A careful review of the materials enclosed in this settlement demand will disclose the injuries sustained by our client to be a consequence of the negligent actions of the Underinsured Motorist. As a result of the collision, [Mr./Ms. Client’s Name] sustained [Insert information about injuries/diagnosis]. Notably, our client has no prior relevant medical history.

Please see medical records for specific diagnosis and treatments, included below as Attachment “[#].”

III. Medical Bills Incurred

As a result of the collision, our client was taken immediately to [First Medical Provider]. Once released, he was then forced to undergo [Type of Treatment] treatment on [#] occasions as a result of this motor vehicle collision. [His/her] treatments included [List types of treatment] with Dr. [Second Doctor’s Name] at [Medical Facility]. Because [Mr./Mrs.] [Client’s Last Name] was still experiencing severe pain caused by this incident, [he/she] sought further treatment with [Third Doctor’s Name] at [Medical Facility]. Finally, because the pain would not subside, [Mr./Mrs.] [Client’s Last Name] eventually was referred to [Fourth Doctor’s Name] for [Type of Treatment].

Our client’s medical expenses total [\$] as follows (*Listed Chronologically*):

Medical Provider	Dates of Treatment	Amount
		\$
		\$
		\$
TOTAL		\$

Please see medical bills for specific treatments and amounts, included below as Attachment “[#].”

Even with the treatment prescribed, it is expected that our client will experience recurrent pain during the remainder of his treatment program and afterwards. There is a high probability that our client's impairment will predispose [him/her] to further problems, from aggravation brought on by normal activities of daily living or new trauma, which may not have otherwise bothered [him/her] had it not been for this accident. It is likely that our client will experience future episodes of pain and weakness as a result of the residual unresolved injuries caused by this collision. If our client experiences any flare-ups or exacerbation episodes, future medical care will be warranted and required. Because of the injuries suffered from this accident, our client is much more susceptible to experiencing similar, and more severe, injuries in the future. According to our client's doctors, a conservative estimate of [his/her] future medical expenses is [\$].

IV. Pain and Suffering

The force of the impact caused our client's body to be forcefully jolted causing [his/her] back and neck to whip [forward/sideways]. [He/She] sustained injuries to [his/her] [insert information about areas of body]. At the time of [his/her] initial examination with [First Medical Provider], our client was continuing to experience mild to moderate, sharp, throbbing pain in [his/her] [insert information about injuries/diagnosis] as a result of being hit by the Underinsured Motorist.

Any activity or movement continues to exacerbate [his/her] pain. Our client also has difficulty with prolonged sitting, standing and going about [his/her] daily routine. Our client was a very active and fit individual, who is now limited by [his/her] pain. Consequently, [he/she] has become extremely irritable and depressed. Only rest alleviates his discomfort.

Our client has also suffered mental and emotional distress due to the pain, suffering and hardship that the accident created. Our client's personal life was adversely affected as well. As a result of the pain and emotional distress experienced all day, our client was usually tired in the evenings. Particularly for the first four months [he/she] experienced difficulty sleeping. It was virtually impossible for [him/her] to find a comfortable position to fall asleep in. Then once asleep, involuntary movements at night caused pain, awakening [him/her]. Getting out of bed in the morning was difficult because during the night [his/her] body would stiffen. This loss of sleep and resulting irritability caused [his/her] to stay at home more often than before the accident, isolated from [his/her] friends. The injury caused a general weakening of the supportive soft tissue structure. Our client continues to experience some pain and discomfort in [his/her] mid-back.

Our client's doctor believes continued treatment is essential to alleviate the pain from worsening and to relieve the pain caused by the injury. Although our client is now considerably improved, [he/she] will not forget the incident of [Date of Accident]. The pain

and suffering associated with it has continued since then and will go on for some time to come.

V. Alternative Demand for Arbitration

As you know you owe your insured, [Mr./Ms. Client's Name], a first party duty of good faith to act in [his/her] best interests. In the event you decline our Underinsured Settlement Demand, this letter shall serve as our formal demand for arbitration pursuant to your insured's policy. Pursuant to Insurance Code § 11580.2(i), this Demand is being sent to you by certified mail, return receipt requested, to ensure that you accept your responsibility to initiate arbitration proceedings with your insured in good faith.

In light of the requirement that the insured and insurer mutually appoint a single arbitrator, we hereby propose the following list of neutral arbitrators who we would agree to appoint to serve as the arbitrator of this claim:

1. Arbitrator's Name and Contact Information
2. Arbitrator's Name and Contact Information
3. Arbitrator's Name and Contact Information

Please let us know which of the arbitrators listed above are acceptable, in addition to your upcoming availability.

If you are unable to select an arbitrator from the enclosed list, please submit a list of three to five persons who you propose to serve as the arbitrator of this claim. If we cannot agree on an arbitrator, or do not hear from you, within thirty days of this letter, we will have no choice but to petition the Superior Court for appointment of a neutral arbitrator, pursuant to California Code of Civil Procedure Section 1281.6. Additionally, we hereby waive statutory deadlines to expedite the arbitration hearing date.

Please respond within 30 days of receipt of this letter. This letter is without wavier of any of our client's and your insured's rights, all of which are hereby expressly reserved.

Additionally, as mentioned, this letter and its enclosures are being sent in furtherance of ongoing settlement negotiations and serve no other purpose. As such, this letter and its enclosures are confidential, privileged, and subject to, among others, California Evidence Code section 1152 and 1154, and all other applicable state or federal laws protecting settlement communications and offers of compromise.

Finally, we request that you provide us with a certified copy of our client's insurance policy and declaration pages, which were in effect at the time of the subject loss.

VI. Conclusion

As illustrated throughout this letter, our client has been significantly affected by the events of this incident. Our client’s medical expenses are in the sum of [\$]. In addition, our client has suffered damages due to the significant pain and suffering that he experienced. Taking into consideration the liability factors, pain and suffering, due to the nature of the injuries sustained, we value our client’s claim in the amount of [\$]. However, to maximize efforts to resolve this matter, settlement in the [\$] range would be fair and reasonable.

We hope you will be mindful of your duties under Insurance Code Section 790.03, particularly with regard to those provisions requiring prompt and fair settlement when liability is reasonably clear.

If these demands are denied, or you offer compromise settlements, we request, pursuant to California Insurance Code Section 790.03(h)(13), that you provide us with prompt and reasonable explanations of the bases relied on in relation to the facts or applicable law in making such denials or offers of compromise.

To assist in your evaluation of this matter, we have enclosed copies of all medical reports and medical bills, and all other material appropriate to this case.

To summarize, this office requests settlement of our client’s claim in the amount of [\$] in exchange for a full release. We thank you in advance for your anticipated cooperation.

Very truly yours,
SELARZ LAW CORP.

Daniel E. Selarz, Esq.

DECLARATION OF DANIEL E. SELARZ, ESQ.

I, Daniel E. Selarz, declare that I am an attorney licensed to practice before all courts of the State of California. I am an attorney of the law firm of Selarz Law Corp., attorneys of record for Plaintiff/Claimant in the above-entitled matter. I have personal knowledge of the facts in this declaration and if called as a witness could and would competently testify thereto. I make this declaration in support of Plaintiff’s Demand for Arbitration, pursuant to Insurance Code section 11580.2(f).

1. Plaintiff/Claimant does not have a workers’ compensation claim related to the above-referenced claim.

2. The above-referenced claim has not proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in the claim.

3. Good cause and grounds exist for the arbitration of the above-referenced claim to proceed immediately because Plaintiff/Claimant is legally entitled to recover damages and there exists a valid dispute as to the nature and extent of those damages.

4. Further good cause and grounds exist for the arbitration of the above-referenced claim to proceed immediately pursuant to an arbitration agreement amongst the parties.

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

Dated: May 24, 2020

By: _____
Daniel E. Selarz, Esq.