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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JESUS AGUILAR, HUGO CANTON,  
GREGORY OWENS and JASON EATON,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v

CITIZENS AUTOMOBILE FINANCE, INC.;  
RBS CITIZENS, N.A., and DOES 1-50,

Defendants.

Case No. C10-05345 (JSW)

CLASS ACTION

~~[PROPOSED]~~ ORDER CERTIFYING  
CLASS FOR SETTLEMENT PURPOSES,  
GRANTING PRELIMINARY  
APPROVAL OF CLASS SETTLEMENT

Date: ~~July 6, 2012~~

Time: 9:00 a.m.

Courtroom 11 – 19<sup>th</sup> Floor

Hon. Jeffrey S. White

**THIS MATTER HAVING** come before this Court for an Order preliminarily certifying a settlement class and preliminarily approving a settlement between the Plaintiffs JESUS AGUILAR, HUGO CANTON, GREGORY OWENS and JASON EATON (“Plaintiffs”), individually and on behalf of the proposed Settlement Class (“Class”), and Defendants CITIZENS AUTOMOBILE FINANCE, INC. (“CAFI”) and RBS CITIZENS, N.A (“Citizens”), and this Court having reviewed the Settlement Agreement and attachments thereto, executed by the parties, and submitted to the Court with the Motion for Preliminary Approval of Class Action Settlement, and the parties having consented to the entry of this Order;

**IT IS HEREBY ORDERED** as follows:

1. This Order of Preliminary Approval incorporates the Settlement Agreement, and the terms used in this Order shall have the meanings and/or definitions given to them in the

1 Settlement Agreement, as submitted to the Court with the Motion for Preliminary Approval of  
2 Class Action Settlement.  
3

4 For purposes of the Settlement, and conditioned upon the Settlement receiving final  
5 approval following the Final Approval Hearing and upon the occurrence of the Effective Date of  
6 Settlement, this Court hereby conditionally certifies a Settlement Class, defined as follows:

7 All persons:

- 8 (1) who purchased a motor vehicle and, as part of that transaction, entered into an  
9 agreement allegedly subject to California's Rees-Levering Automobile Sales  
10 Finance Act, Civil Code §2981, *et seq.*,  
11  
12 (2) whose contract was assigned to CAFI or RBS CITIZENS,  
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14 (3) whose motor vehicle was repossessed or voluntarily surrendered,  
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16 (4) who were issued an NOI by CAFI or RBS CITIZENS from May 20, 2005 to  
17 June 30, 2011, and  
18  
19 (5) against whose account a deficiency balance was assessed in any amount.

20 2. Without prejudice to Final Approval, the Settlement, on the terms and conditions stated  
21 therein, is preliminarily approved by this Court as being fair, reasonable and adequate, free of  
22 collusion or indicia of unfairness, and within the range of possible final judicial approval. This  
23 Court specifically finds that the Settlement resulted from extensive arms-length negotiation, in  
24 mediation, the Settlement is sufficient to warrant dissemination of notice of the Settlement and of  
25 the Final Approval Hearing on said Settlement to the Settlement Class, and the Class  
26 Representatives and Class Counsel are provisionally found to fairly and adequately represent the  
27 interests of the Class and to satisfy the requirements to be representatives of and counsel to the  
28 Class.

3. A Final Approval Hearing shall be held on December 7, 2012 at 9:00 a.m. before

1 the Honorable Jeffrey S. White in Courtroom 11 of UNITED STATES DISTRICT COURT  
2  
3 NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION, located at 450  
4 Golden Gate Avenue, San Francisco, CA 94102, to consider: (a) the fairness, reasonableness  
5 and adequacy of the proposed Settlement; (b) whether the Settlement should be finally approved  
6 by this Court; (c) the application of Class Counsel for an award of Attorneys' Fees and  
7 Expenses; (d) the application of an incentive award to the Class representatives; and (e) such  
8 other matters as this Court may deem proper and necessary.

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10 4. The Class Notice of the proposed Settlement is attached to the Settlement Agreement as  
11 Exhibit B and is hereby approved for the purpose of notifying the Class as to the proposed  
12 Settlement, the Final Approval Hearing, and the rights of members of the Class, and it shall be  
13 sent substantially in the form approved to the members of the Class. Kurtzman Carson  
14 Consultants is appointed as the Class Administrator and shall be responsible for implementing  
15 the Notice to the Settlement Class.

16  
17 5. As set forth in the Settlement Agreement, the Class Administrator shall provide  
18 individual notice to all borrowers (1) who purchased a motor vehicle and, as part of that  
19 transaction, entered into an agreement allegedly subject to California's Rees-Levering  
20 Automobile Sales Finance Act, Civil Code §2981, *et seq.*, (2) whose contract was assigned to  
21 CAFI or RBS CITIZENS, (3) whose motor vehicle was repossessed or voluntarily surrendered,  
22 (4) who were issued an NOI by CAFI or RBS CITIZENS from May 20, 2005 to June 30, 2011,  
23 and (5) against whose account a deficiency balance was assessed in any amount.

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25 6. The notice shall be sent by the Class Administrator to the respective members of the  
26 Settlement Class via first class postage pre-paid U.S. Mail within 30 days of the issuance of this  
27 Order.

28 7. Prior to the Final Approval Hearing, the Class Administrator shall provide a declaration

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2 to the Court, with a copy to Class Counsel, and counsel for Citizens, attesting to the measures  
3 undertaken to provide the Class Notice to the members of the Settlement Class.

4 8. The Class Notice of the proposed Settlement to the Settlement Class, as set forth in  
5 Exhibit B to the Settlement Agreement, and approved by this Order, is the best notice  
6 practicable, and is reasonably calculated, under the circumstances, to apprise the Settlement  
7 Class of the pendency of the Action and their right to participate in, object to, or exclude  
8 themselves from the Settlement. This Court further finds that the Class Notice of the proposed  
9 Settlement is due and sufficient notice of the Final Approval Hearing, the Settlement, the  
10 application for attorneys' fees, and expenses, and incentive award, and other matters set forth  
11 therein, and that the Class Notice of the proposed Settlement fully satisfies the Federal Rules of  
12 Civil Procedure and due process of law, to all persons entitled thereto. All costs and expenses  
13 incurred in connection with disseminating the Class Notice to the Settlement Class shall be paid  
14 out of the Cash Payment being paid by Citizens under Section 2.22 of the Settlement Agreement.

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16 9. Any Settlement Class Member who intends to object ("Objector") to the fairness,  
17 reasonableness and adequacy of the Settlement ("Objections") must file a written Objection with  
18 the Class Administrator and mail a copy to Citizens counsel, and to Class Counsel at the  
19 addresses set forth below, postmarked not later 60 days after the date the Class Notice is mailed  
20 to the Settlement Class. Any Objector must set forth his/her full name, current address and  
21 telephone number. Objections must be served:

22  
23 Upon Class Administrator at:

24 Kurtzman Carson Consultants  
25 75 Rowland Way  
26 Suite 250  
27 Novato, CA 94945

28 Upon Citizens at:

Mark C. Dosker/Julie E. Schwartz

1 Squire Sanders (US) LLP  
2 275 Battery St., Suite 2600  
3 San Francisco, CA 94111

4 Upon Class Counsel at:

5 Bryan Kemnitzer  
6 KEMNITZER, BARRON & KRIEG  
7 445 Bush Street, 6<sup>th</sup> Floor  
8 San Francisco, CA 94108

9 10. Objectors must state in writing all Objections and the reasons thereto, and a statement  
10 regarding whether the Objector intends to appear at the Final Approval Hearing(s). No Objector  
11 shall be entitled to be heard at the Final Approval Hearing, and no written objections or briefs  
12 submitted by an Objector shall be received or considered by this Court at the Final Approval  
13 Hearing unless the Objector has fully complied with all terms and conditions set forth in the  
14 Notice of Proposed Settlement as approved herein, and as set forth in the Settlement Agreement.  
15 If an Objection is overruled, the Objector will be bound by the terms of the Settlement.  
16 Settlement Class Members who fail to file and serve timely written objections in the manner  
17 specified above shall be deemed to have waived any objections and shall be foreclosed from  
18 making any objection (whether by appeal or otherwise) to the Settlement or Settlement  
19 Agreement.

20 11. Members of the Settlement Class may elect to exclude themselves from the Settlement  
21 Agreement, relinquishing their rights to any and all benefits under the Settlement Agreement.  
22 Members of the Settlement Class who exclude themselves from the Settlement will not release  
23 their claims pursuant to the release set forth in the Settlement Agreement. A Settlement Class  
24 Member wishing to exclude himself or herself from the Settlement must so notify the Class  
25 Administrator by letter postmarked no later than 60 days after the date the Class Notice is mailed  
26 to the Settlement Class) which in all respects complies with the terms and conditions for exclusion  
27 as set forth in the Class Notice of the proposed Settlement, approved herein. Members of the  
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1 Settlement Class who fail to submit a valid and timely request for exclusion shall be bound by all  
2 terms of the Settlement Agreement and the Final Order and Judgment, regardless of whether they  
3 have requested exclusion from the Settlement.  
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5 12. Any member of the Settlement Class who submits a timely request for exclusion may not  
6 file an Objection to the Settlement and shall be deemed to have waived any rights or benefits  
7 under the Settlement Agreement.

8 13. The Court shall hold a Final Approval Hearing in this matter on December 7, 2012.  
9 Class Counsel shall file their Motion for Final Approval and all supporting papers not later than  
10 twenty-one (21) days before the deadline for filing objections.  
11

12 14. In the event that (a) this Court does not finally approve the Settlement as provided in the  
13 Settlement Agreement; (b) this Court does not enter the Final Order and Judgment as provided in  
14 all material respects and substantially in the form set forth in the Settlement Agreement; or (c)  
15 the Settlement does not become final for any other reason, and the Parties, following reasonable  
16 efforts, do not agree in writing to modify the Settlement Agreement and the Settlement is not  
17 consummated, the Settlement Agreement shall be null and void and any order or judgment  
18 entered by this Court in furtherance of this Settlement shall be vacated *nunc pro tunc*. In such a  
19 case, the Parties shall proceed in all respects as if the Settlement Agreement had not been  
20 executed and the Parties shall in no way be prejudiced in proceeding with or defending this  
21 litigation, the conditional class certification effected herein will be null and void, and Citizens  
22 shall have the right to object to certification of the Settlement Class or any other class at any  
23 future time.  
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25 15. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court  
26 retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof  
27 in accordance with the Settlement preliminarily approved herein and the related orders of this  
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1 Court.

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3 16. All discovery and other pretrial proceedings in this action are stayed and suspended until  
4 further order of this Court, except such actions as may be necessary to implement the Settlement  
5 Agreement and this Order.

6 17. The parties are directed to carry out their obligations under the Settlement Agreement.


7 **Summary of Applicable Dates**

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	Preliminary Order Issued	July 3, 2012
9	1. Class Notice to be sent by	August 6, 2012
10	2. Motion for Attorneys' Fees and Costs filed by	October 5, 2012
11	3. Exclusion from the Settlement Class postmarked by	October 4, 2012
12	4. Objection to the Settlement postmarked by	October 4, 2012
13	5. Motion for Final Approval filed by	November 2, 2012
14	6. Class Administrator Declaration filed by	November 26, 2012
15	7. Final Approval hearing	December 7, 2012
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19 **SO ORDERED**

20 Dated: July 3, 2012

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22 The Honorable Jeffrey S. White  
23 United States District Judge