

1 In the objections, Harley argues that the F&R is clearly erroneous for the following
2 reasons: (1) it failed to reflect the rigorous analysis required under Federal Rule of Civil
3 Procedure 23; (2) it erroneously concluded that Plaintiff was an adequate class representative; (3)
4 the presence of arbitration agreements and class action waivers in some of the unnamed class
5 members contractual agreements with Harley precludes certification; and (4) it certified a class
6 covering a period longer than the one proposed by Plaintiff. In accordance with the provisions of
7 28 U.S.C. § 636 (b)(1)(c), this Court has conducted a *de novo* review of the case and reviewed
8 Harley's objections. See Doc. 104.

9 Harley's objections are largely reiterations of the arguments made to the Magistrate
10 Judge. Contrary to Harley's objections, the Court agrees with the F&R that Plaintiff is an
11 adequate class representative, and the Court does not find that the F&R failed to reflect the
12 rigorous analysis required by Rule 23. Further, the Court does not find the fact that some class
13 members may be subject to an arbitration agreement is grounds for rejecting the F&R – (1) it is
14 unknown how many class members are subject to the agreement; (2) it is unknown whether
15 Defendants will even attempt to enforce the arbitration provision; and (3) it is unknown why later
16 orders/proceedings, such as creating subclasses or excluding class members for example, would
17 be impractical or improper. E.g. Coleman v. General Motors Acceptance Corp., 220 F.R.D. 64,
18 91 (M.D. Tenn. 2004). As such, Harley's first three objections are overruled.

19 However, the Court agrees that the language of the class certification should be altered.
20 Plaintiff's motion sought to certify a class of individuals who received a Notice Of Intent To
21 Dispose Of Repossessed Collateral ("NOI") "since August 19, 2004." See Doc. No. 85 at 3:17-
22 21. The language of Plaintiff's proposed certified class did not contain an express "end date" for
23 the class. However, under the section of Plaintiff's motion entitled "During The Class Period
24 [Harley] Used Standardized NOI Forms That Suffer From The Same Legal Defects," the Plaintiff
25 explained:

26 [Harley] admits that during the class period, from at least August 19, 2004 . . . to
27 May 2011, it used either one of two nearly identical version of its standard form

1 NOI to class members. *Each member of the putative class received one of the two*
2 *versions of the NOI.* The two versions are virtually the same and suffer from the
3 same common defects.

4 Doc. No. 85 at 4:13-19 (emphasis added). Thus, by Plaintiff's admission, each member of the
5 putative class received one of two NOI's, and those NOI's were used by Harley between August
6 2004 and May 2011 only. See id. The language of Plaintiff's proposed class certification was
7 the language recommended in the F&R. That language will be altered so that it more clearly
8 comports with Plaintiff's explanation and description of the class members. The class
9 certification will be limited in time from August 19, 2004 to May 2011.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. The Findings and Recommendation filed April 9, 2012 (Doc. 102) is **ADOPTED** consistent
12 with the above discussion;
- 13 2. Plaintiffs' Motion for Class Certification is GRANTED;
- 14 3. The Court certifies the following Class:

15 All persons who purchased a motor vehicle in California that was subject to
16 California's Rees-Levering Automobile Sales Finance Act, Cal. Civil Code §
17 2981, *et seq.*, whose vehicle was repossessed or voluntarily surrendered to Harley-
18 Davidson Credit Corporation, or its agents, and to whom Harley-Davidson Credit
Corporation sent a Notice of Intent to Dispose of Repossessed Collateral between
August 19, 2004 and May 2011, and against whom Harley-Davidson Credit
Corporation claimed a deficiency was owed.

- 19 4. Luis Manual Mora is appointed as Class representative; and
- 20 5. The law firm of Kennizter, Barron & Krieg, LLP is appointed as Class counsel.

21
22 IT IS SO ORDERED.

23 Dated: August 6, 2012

24 
25 CHIEF UNITED STATES DISTRICT JUDGE
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