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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUIS MANUEL MORA, individually, and on)
behalf of the class,)

Plaintiff,)
vs.)

HARLEY-DAVIDSON CREDIT CORP., a)
corporation; and DOES 1 through 10,)
inclusive,)

Defendants.)

Case No.: 1:08-CV-01453-BAM

**ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING AWARD
OF ATTORNEYS' FEES, AND
ORDERING DISTRIBUTION OF
RESIDUE**

On December 13, 2013, this Court held a hearing on Plaintiffs' Motion for Final Approval of Class Action Settlement and Motion for Attorneys Fees. (Doc. 137, 138, 140.) Counsel William Krieg appeared in person on behalf of Plaintiff Luis Manuel Mora and the preliminarily certified class ("Plaintiff"). Counsel Feather Baron appeared telephonically on behalf of Harley-Davidson Credit Corporation ("HDCC").

Having considered the briefs, arguments of counsel, and the entire record in this case, the Court finds that: (1) the Agreement is the product of good-faith arms' length negotiations among the parties, each of whom was represented by experienced counsel; (2) that the Agreement should be approved; (3) that there were no objections to the Agreement; and (4) that there is no just reason for delay of the entry of judgment. Accordingly, the Court directs entry of this Final

1 Approval Order and Final Judgment, which shall constitute a final adjudication of the class
2 action.

3 Good cause appearing therefore,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

5 1. For purposes of this Final Approval Order and Final Judgment, except as set forth
6 herein, the Court adopts and incorporates the definitions in the Agreement. (Doc. 137, Attach. 5.)

7 2. The Court has jurisdiction over the subject matter of this litigation and over all
8 parties to this action, including all Settlement Class Members.

9 3. With respect to the Settlement Class, the Court finds, solely for purposes of this
10 settlement, that: (a) the Settlement Class is ascertainable and its members are so numerous that
11 joinder of all Settlement Class Members in the action is impracticable; (b) there are questions of
12 law or fact common to the Settlement Class for purposes of determining whether this settlement
13 should be approved; (c) the claims of Mora are typical of the claims of absent members of the
14 Settlement Class; (d) Mora and Class Counsel have fairly and adequately protected the interests
15 of the Settlement Class Members in connection with the proposed settlement and satisfied the
16 requirements of Fed. R. Civ. P. 23(e); (e) for purposes of determining whether the settlement is
17 fair, reasonable and adequate, common questions of law and fact predominate over questions
18 affecting only individual Settlement Class Members; and (f) a class action is superior to other
19 available methods for the fair and efficient adjudication of the controversy, considering: (i) the
20 interests of the Settlement Class Members in individually controlling the prosecution of separate
21 actions; (ii) the extent and nature of any litigation concerning the controversy already
22 commenced by or against Settlement Class Members; (iii) the desirability or undesirability of
23 continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to
24 be encountered in the management of this action as a class action.

25 4. The Court finds that mailing of the Notice of Class Action Settlement in the
26 manner provided in the Preliminary Approval Order fully and accurately informed all Settlement
27 Class Members of all material elements of the proposed settlement, constitutes the best notice
28 practicable under the circumstances, constitutes valid, due and sufficient notice to all Settlement

1 Class Members and complies fully with the requirements of Federal law and the United States
2 Constitution.

3 5. The Court hereby finally approves the settlement of this action in accordance with
4 the terms of the Agreement, finds that the settlement is fair, reasonable and adequate in all
5 respects pursuant to Fed. R. Civ. P. 23(e) and orders the parties to consummate the Agreement in
6 accordance with its terms.

7 6. The following Settlement Class is hereby finally certified solely for settlement
8 purposes under Fed. R. Civ. P. 23(e):

9 All persons who purchased a Motor Vehicle in California whose Motor Vehicle
10 was repossessed or voluntarily surrendered to HDCC, or its agents, and to whom
11 HDCC sent an NOI between August 19, 2004 and May 31, 2011, and against
12 whom HDCC claimed a deficiency was owed.

13 7. The following Settlement Sub-Class is hereby finally certified solely for
14 settlement purposes under Fed. R. Civ. P. 23(e):

15 All persons in the Settlement Class who signed Loan Agreements which
16 contain arbitration clauses.

17 8. The Court orders the parties to the Agreement to perform their obligations
18 thereunder in accordance with and subject to the terms of the Agreement.

19 (a) Within ten (10) business days following the Effective Date, HDCC shall
20 transfer the Settlement Fund to a non-interest bearing account held by the Class Administrator.
21 Upon remittance to the Class Administrator, the HDCC shall have no further liability for
22 payments to the Settlement Class or Settlement Sub-Class.

23 (b) On or before the Distribution Date, the Class Administrator shall mail by
24 first-class mail checks payable to Settlement Class Members in the manner and amounts set
25 forth in the Agreement.

26 (c) The Court approves an incentive award to Luis Manuel Mora in the
27 amount of \$5,000.

28

1 (d) The Court approves an award to Class Counsel of attorneys' fees in the
2 total amount of \$645,000, plus \$11,078.56 in costs. The Court finds that this award is appropriate
3 given the contingent nature of this case, the novelty and difficulty of the questions involved, and
4 the results obtained for the Settlement Class. There were no objections to Class Counsel's request
5 for approval of attorneys' fees and expenses.

6 (e) The HDCC shall pay the incentive award and award of fees, costs and
7 expenses on or before the Distribution Date.

8 (f) Any funds remaining in the Settlement Fund one hundred (100) days
9 after the Distribution Date shall be distributed in accordance with § 5.05 of the Agreement. For
10 purposes of the *cy pres* distribution, the Court approves the following as the designated
11 recipients of the funds, to be shared proportionally as follows:

12 Central California Legal Services, Inc.
13 Court Appointed Special Advocates of Fresno County
14 Court Appointed Special Advocates of Tulare County
15 National Consumer Law Center—The California Consumer
16 Justice Initiative
17 Community Housing Counsel of Fresno

18 (g) The parties have agreed, and the Court hereby orders, that no Settlement
19 Class Member has a vested interest in any amount to be paid to him or her under this Settlement
20 unless and until he or she has cashed a settlement check. In addition, no Settlement Class
21 Member has a vested interest in any portion of the Settlement Fund created pursuant to the
22 Agreement.

23 9. Pursuant to a timely filed request for exclusion, the following Settlement Class
24 Members are excluded from the Settlement Class: Shirley M. Vale.

25 10. No Settlement Class Member objected to the settlement.

26 11. If the Effective Date does not occur for any reason whatsoever, this Final
27 Approval Order and Final Judgment and the Preliminary Approval Order shall be deemed
28 vacated and shall have no force and effect. In such an event:

1 (a) the Agreement shall be null and void, and all parties shall return, without
2 prejudice, to the status quo ante as of the date of the Agreement as if the Agreement had not been
3 entered into; and

4 (b) the certification of the Settlement Class and Settlement Sub-Class will be
5 void, no doctrine of waiver, estoppel or preclusion shall be asserted in any certification
6 proceedings in the Action, and the Agreement and its existence shall be inadmissible to establish
7 any fact relevant to class certification or any alleged liability of the HDCC for the matters
8 alleged in the Action or for any other purpose.

9 12. The Court hereby finds and orders the following:

10 (a) Upon the Effective Date, the Settlement Class Members (except those who
11 have obtained proper and timely exclusion from the Settlement Class), and their respective heirs,
12 executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in
13 interest and assigns will be deemed to have fully released any all claims, liens, demands,
14 causes of action, obligations, damages, and liabilities, known or unknown, that they have or may
15 have against HDCC and any of its present and former officers, directors, attorneys, accountants,
16 agents, representatives, employees, heirs, insurance carriers, predecessors, affiliates, agents,
17 parents, subsidiaries and successors in interest arising out of any claims asserted on their behalf
18 in the Action; this release includes, but is not limited to, any claims arising out of or related to
19 HDCC's sending of NOIs, the content of the NOIs, the assertion of a deficiency balance
20 following repossession or surrender, the collection or attempted collection of the deficiency
21 balance, and the reporting to credit bureaus of the amounts remaining on the account after
22 repossession or surrender. This release does not extend to any existing or future claims that
23 may be asserted against the Class Administrator.

24 (b) Upon the Effective Date, Mora and his heirs, executors, administrators,
25 representatives, agents, attorneys, partners, successors, predecessors-in-interest and assigns will
26 be deemed to have fully released any and all claims, demands, or causes of action of any nature
27 which he has, had, or may have against HDCC and any of its present and former officers,
28 directors, attorneys, accountants, agents, representatives, employees, heirs, insurance carriers,

1 predecessors, affiliates, agents, parents, subsidiaries or successors in interest, without limitation.

2 (c) The releases identified herein shall be referred to as the Released Claims,
3 and the parties released shall be referred to as the Released Parties. The Released Claims
4 specifically extend to claims that Mora and/or Settlement Class Members do not know or suspect
5 to exist in their favor at the time that the settlement, and the releases contained therein, becomes
6 effective and that are encompassed in this settlement. The foregoing releases constitute a waiver
7 of, without limitation as to any other applicable law, section 1542 of the California Civil Code,
8 which provides:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
12 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
13 OR HER SETTLEMENT WITH THE DEBTOR.
14

15 Mora and each Settlement Class Member understand and acknowledge the significance of these
16 waivers of California Civil Code § 1542 and/or of any other applicable law relating to limitations
17 on releases. In connection with such waivers and relinquishment, Mora and each Settlement
18 Class Member acknowledge that they are aware that they may hereafter discover facts in addition
19 to, or different from, those facts which they now know or believe to be true with respect to the
20 subject matter of the settlement, but that it is their intention to release fully, finally and forever
21 all Released Claims, and in furtherance of such intention, the release of the Released Claims will
22 be and remain in effect notwithstanding the discovery or existence of any such additional or
23 different facts.

24 13. Neither this Order nor the Settlement Agreement on which it is based are an
25 admission or concession by any party of any fault, omission, liability, or wrongdoing.
26 Notwithstanding the Settlement Agreement, HDCC denies the material allegations made in this
27 Action and denies any and all liability with respect to any and all facts and claims alleged in the
28 Action. This Order is not a finding of the validity or invalidity of any claims in this Action or a

1 determination of any wrongdoing by any party. The Final Approval of this settlement will not
2 constitute any opinion or determination of this Court as to the merits of the claims or defenses of
3 any party.

4 14. Without affecting the finality of this Final Approval Order and Final Judgment,
5 the Court retains jurisdiction over the parties to enforce the terms of the judgment until
6 performance in full of the terms of the settlement. The Court finds that there is no just reason for
7 delay and hereby directs the Clerk of the Court to enter this Final Approval Order and Final
8 Judgment pursuant to Fed. R. Civ. P. 23(e).

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10 IT IS SO ORDERED.

11 Dated: January 2, 2014 /s/ Barbara A. McAuliffe

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13 UNITED STATES MAGISTRATE JUDGE
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