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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

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

13 Plaintiff,)

14 vs.)

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

18 Defendants.)

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

**STIPULATION AND ORDER TO
MODIFY SETTLEMENT AGREEMENT
AND RELEASE**

19 IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE PARTIES
20 THROUGH THEIR RESPECTIVE COUNSEL AS FOLLOWS:

21 WHEREAS, the Settlement Agreement and Release herein dated June 5, 2013
22 (“Settlement Agreement”)¹ states, in part, at Para 5.01.c.: “If there are two borrowers on an
23 account, then the reimbursement shall be made payable jointly to all borrowers”;

24 WHEREAS, after settlement checks were issued by the Class Administrator pursuant to
25 the terms of the Settlement Agreement, the parties were advised that in some cases, one co-
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28 ¹ Unless otherwise specified, the capitalized terms used herein have the meaning set forth in the Settlement Agreement.

1 borrower listed as a payee on a jointly-issued check could not be located and therefore the other
2 co-borrower who received the settlement check was unable negotiate it without the missing co-
3 borrower's signature;

4 WHEREAS, under the Settlement Agreement, settlement checks that are not cashed by
5 Settlement Class Members will be reissued to cy pres recipients in possible derogation of
6 claiming co-borrowers' rights; and

7 WHEREAS, it appears fair and reasonable that claiming co-borrowers should not forfeit
8 his or her right to settlement funds because his or her co-borrower cannot be located or because it
9 is otherwise impractical or impossible to obtain his or her signature.

10 NOW THEREFORE, IT IS HEREBY STIPULATED that:

11 1. In the event a co-borrower in receipt of a check issued jointly pursuant to
12 Paragraph 5.01.c. of the Settlement Agreement ("Claiming Co-Borrower") submits a complaint
13 to the Class Administrator or Class Counsel on or before the date of this Stipulation asserting
14 that the co-payee on the check cannot be located ("Missing Co-Borrower"), the Class
15 Administrator shall, solely at the direction of Class Counsel, issue a new check made payable to
16 the Claiming Co-Borrower alone, provided all the following conditions are first satisfied:

17 a. Class Counsel receives from the Claiming Co-Borrower a signed
18 statement (i) specifying the amount he or she paid to HDCC on his or her deficiency balance, and
19 (ii) affirming that he or she made a diligent effort to locate the Missing Co-Borrower and obtain
20 his or her signature on the jointly issued check;

21 b. Class Counsel determines based on all available information,
22 including the above-referenced statement from the Claiming Co-Borrower, that the Claiming Co-
23 Borrower (i) made some or all the payments on his or her deficiency balance and is entitled to a
24 refund of the full or partial amount claimed by the Claiming Co-Borrower, and (ii) made a
25 diligent effort to locate the Missing Co-Borrower and obtain his or her signature on the jointly
26 issued check; and
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1 c. Class Counsel has confirmed that the check initially issued jointly
2 to the Claiming Co-Borrower and Missing Co-Borrower (i) has not been negotiated, and (ii) has
3 expired by its terms.

4 2. If Class Counsel determines that a Claiming Co-Borrower has satisfied the
5 terms contained in Paragraph 1 above, Class Counsel shall instruct the Class Administrator to
6 issue a replacement check to such Claiming Co-Borrower of an amount specified by Class
7 Counsel not to exceed the amount of the check initially issued jointly to the Claiming Co-
8 Borrower and his or her Missing Co-Borrower. The replacement check shall have an expiration
9 date of sixty (60) days or less.

10 3. Class Counsel shall promptly advise the Class Administrator and counsel
11 for HDCC as to any demands for and decisions regarding issuance of replacement checks
12 pursuant to this Stipulation. Class Counsel shall further submit a declaration to the Court
13 identifying any checks that have been or will be reissued to Claiming Co-Borrowers pursuant to
14 this Stipulation and confirming that the terms contained in Paragraph 1 of this Stipulation were
15 satisfied in each instance.

16 4. In the event that one or more replacement checks are issued pursuant to
17 this Stipulation, the calculation and distribution of the residual or cy pres funds shall be delayed
18 until such time as all replacement checks have been cashed, expired, or otherwise accounted for.

19 5. All Missing Co-Borrowers and Claiming Co-Borrowers, on behalf of
20 themselves and their respective heirs, executors, administrators, representatives, agents,
21 attorneys, partners, successors, predecessors-in-interest and assigns, shall and hereby do release
22 any and all claims, liens, demands, causes of action, obligations, damages, and liabilities, known
23 or unknown, that they have or may have against HDCC and any of its present and former
24 officers, directors, attorneys, accountants, agents, representatives, employees, heirs, insurance
25 carriers, predecessors, affiliates, agents, parents, subsidiaries and successors in interest arising
26 out of any replacement checks issued by the Class Administrator pursuant to this Stipulation.
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1 This specific release supplements the Settlement Class Members' general release contained in
2 Paragraph 5.07 of the Settlement Agreement, which is incorporated herein by this reference.

3 6. This Stipulation is executed in accordance with Paragraph Except as
4 specifically modified in this Stipulation, the Settlement Agreement and every provision thereof
5 are unchanged and remain in full force and effect.

6 7. This Stipulation may be executed by duplicate or facsimile copies in place
7 of original signatures.

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9 Dated: May24, 2014

10 /s/ Luis Manuel Mora
11 By: _____
12 LUIS MANUEL MORA, individually and on
13 behalf of the Settlement Class and Settlement
14 Sub-Class

15 Dated: May21, 2014

HARLEY-DAVIDSON CREDIT CORP.

16 /s/ Thomas E. Fleming
17 By: _____
18 Name: Thomas E. Fleming
19 Title: Director, Loss Mitigation

20 Dated: May29, 2014

KEMNITZER, BARRON & KRIEG, LLP

21 /s/ William M. Krieg
22 By: _____
23 WILLIAM M. KRIEG
24 Attorneys for Plaintiff, the Settlement Class and
25 Settlement Sub-Class

26 Dated: May 29, 2014

REED SMITH LLP

27 /s/ Alicia A. Baiardo
28 By: _____
29 DAVID C. POWELL
30 ALICIA A. BAIARDO
31 Attorneys for Defendant HARLEY-DAVIDSON
32 CREDIT CORP.

1 **ORDER**

2 Based on the Stipulation of the parties, and for good cause shown, the Settlement
3 Agreement and Release June 5, 2013 shall be modified in the manner described in the above
4 stipulation.
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6 IT IS SO ORDERED.

7 Dated: June 3, 2014 /s/ Barbara A. McAuliffe
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9 **UNITED STATES MAGISTRATE JUDGE**
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