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 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

11 KELLY CASTILLO , NICHOLE
 BROWN, and BARBARA GLISSON,
 12 *Individually and on behalf of all others*
similarly situated,
 13
 Plaintiffs,
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 v.
 15 GENERAL MOTORS
 CORPORATION,
 16
 Defendant.

Case No. 2:07-CV-02142 WBS-GGH
STIPULATION AND [~~PROPOSED~~]
ORDER RE CREATION OF
SUBCLASS, APPROVAL OF
SUBCLASS NOTICE, AND HEARINGS
ON APPROVAL OF CLASS AND
SUBCLASS SETTLEMENTS

Hearing Date: March 30, 2009
 Time: 2:00 p.m.

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 19 **RECITALS**

20 1. R. L. Polk & Co. ("Polk") is a third-party vendor which GM engaged to
 21 generate the list of current and former owners of class vehicles that GM utilized in
 22 providing notice of the Settlement to the Class ("Mailing List"). Polk is the only company
 23 with comprehensive access to fifty state motor vehicle registration information for past
 24 and current vehicle owners along with their most current address information. The
 25 specific process that Polk used to generate the Mailing List is explained in the Declaration
 26 submitted by Polk on February 27, 2009. (Doc. No. 66.)

27 2. On Thursday, March 12, 2009, GM's counsel first learned from Polk that
 28 two discrete computer programming errors by Polk which Polk had discovered a few days

1 earlier had caused the omission from the Mailing List of certain individuals and
2 businesses who are members of the Class provisionally certified by the Court. Both of
3 these errors resulted from a process that Polk routinely runs to avoid including duplicate
4 names on mailing lists, a process called “de-duping.” Polk discovered these errors in the
5 course of responding to a request by Class Counsel for additional Mailing List
6 information.

7 3. The first error caused the first letter of individual Class Members’ last
8 names shown in the vehicle registration data to be inserted as the customer’s middle initial
9 on the Mailing List. Thus, for example, the names “John Y. Jones,” “John J. Jones” and
10 “John Jones” [no middle initial] as they appeared in the registration data for the same
11 Vehicle Identification Number (“VIN”) all became “John J. Jones” in the Mailing List.
12 As a result, when Polk ran the “de-duping” program on these three identical names
13 associate with a specific VIN, it erroneously eliminated all of these names from the
14 Mailing List except the one with the most recent “transaction date.” The term
15 “transaction date” includes the initial vehicle registration, changes of address and
16 renewals by each individual owner as well as any changes of ownership and registration,
17 changes of address and renewals by the subsequent owner(s). Altogether, this error
18 caused the omission from the Mailing List of 2,775 individual Class Member records.
19 This does not mean, however, that the notice of Settlement was not mailed to all of these
20 Class Members. To the contrary, the parties and Polk believe that most of these omissions
21 did not result in Class Members actually failing to receive notice because “John Jones”
22 and “John M. Jones” in the above example are likely to be either the same person or
23 related members of a single family. This conclusion is based on the slim chance that any
24 particular vehicle would be owned successively by unrelated persons with identical first
25 and last names. It is possible, however, that a small number of people who are prior
26 owners of a Class vehicle identified by a particular VIN were removed from the Mailing
27 List during the “de-duping” procedure because a subsequent owner of the same vehicle
28 coincidentally happened to have the same first and last names as the prior owner.

1 4. The second error stemmed from the de-duping of the names of businesses
2 which own or owned Class Vehicles identified by particular VINs. In those cases where
3 more than one business owned a Class Vehicle identified by a specific VIN, the Polk de-
4 duping process in error was set up to compare the personal name fields in the owner
5 registration records. In the case of businesses, however, the personal name field was
6 always blank. Thus, whenever a specific VIN was registered successively to two or more
7 different businesses, the de-duping program erroneously eliminated all of the registration
8 records except the one with the latest “transaction date” (as explained above). So for,
9 example, if ABC Corporation bought a specific Saturn ION with a specific VIN and then
10 sold it to XYZ Corporation, which in turn sold it to MNO Corporation, both the ABC and
11 XYZ registrations would have been omitted from the Mailing List, and the Settlement
12 Notice would have been mailed only to MNO Corporation. This error caused the
13 omission of 4,315 Class Member records from the Mailing List. It is likely that a
14 significant but unknown number of these omissions resulted in the Settlement Notice not
15 being mailed to the Class Member.

16 5. GM advised Class Counsel of the Polk errors late in the afternoon on March
17 12, 2009, the same day that it learned of them. Subsequently GM and Class Counsel had
18 further discussions with Polk to pin down the nature and scope of the errors and,
19 specifically, the number of Class Members who may not have received timely notice of
20 the Settlement. GM and Class Counsel also have had a series of discussions concerning
21 the best way to remedy Polk’s errors. On the one hand, Class Counsel does not want to
22 delay the Settlement approval hearing set for March 30, 2009 because, in the event the
23 Court approves the Settlement, Class Members will become eligible promptly to file
24 claims for the Settlement benefits. On the other hand, Class Counsel and GM understand
25 that Class Members whose names Polk erroneously omitted from the Mailing List are
26 entitled to the same choice as other Class Members: to participate in the Settlement (if
27 approved) or to remove themselves from the Class (*i.e.*, “opt out”). GM and Class
28 Counsel, on behalf of the proposed Subclass of persons who may not have received notice

1 of the Settlement (as further defined below), have agreed to the following Stipulation to
2 ensure that Subclass Members may receive their rights and benefits under the Settlement.

3 **STIPULATION**

4 Based on the above recitals, **IT IS HEREBY STIPULATED**, by and between
5 Class Counsel and GM, by and through its undersigned counsel of record, that the Court
6 may enter its order as follows to address the notice issues created by the Polk
7 programming errors, effectuate the proposed settlement as to all Class Members in
8 accordance with the terms previously proposed in the Stipulation of Settlement, permit the
9 Settlement approval hearing to proceed on March 30, 2009, and ensure the mailing of
10 appropriate notice to Class Members potentially affected by Polk's errors:

11 (a) As to any members of the proposed Class (1) to whom the Settlement
12 Notice was actually mailed or (2) who otherwise actually received notice of the
13 Settlement on a timely basis, the Settlement approval hearing shall go forward on March
14 30, 2009;

15 (b) All other members of the proposed Class are excluded from the Class and,
16 except for those who are shown on the "opt out" list (Doc. No. 67) as having submitted
17 valid and timely requests for exclusion from the Class, will instead be members of a
18 Subclass pursuant to F.R.Civ. P. 23(c)(5) ("Subclass Members"). GM on the date upon
19 which the Final Notice and Claim Forms are mailed to Class Members will mail the
20 original Notice of Settlement to Subclass Members with a cover letter and a Claim Form
21 substantially similar to the attached Exhibit A informing them of (a) the possible mailing
22 error, (2) their potential right to exclude themselves from the Subclass, and (3) a separate
23 Subclass settlement approval hearing to be set on **June 1, 2009, at 2:00 p.m.**

24 (c) If the Court approves the Settlement as to Class Members at or after the
25 March 30, 2009 hearing, the Court, so as not to delay the Effective Date of the Settlement
26 and the ability of Class Members to claim Settlement benefits, will enter final judgment in
27 favor of Class Members pursuant to F.R.Civ.P. 54(b) in substantially the form attached
28 hereto as Exhibit B.

1 (d) If the Court subsequently approves the Settlement as to the proposed
2 Subclass, the Court will enter final judgment in favor of Subclass Members in
3 substantially the form attached hereto as Exhibit C. GM subsequently will mail
4 Supplemental Final Notice and Claim Forms to potential Subclass Members in a form
5 substantially similar to the Final Notice and Claim Forms mailed to Class Members.

6 (e) If the Settlement is approved as to Class Members, then absent an exclusion,
7 Subclass Members will receive the benefits of the Settlement immediately and will have
8 the ability to submit claims without further delay by submitting Claim Forms in
9 substantially the form shown in the attached Exhibit A. Any claim submitted before the
10 expiration of the Subclass opt-out deadline will constitute a waiver by the Subclass
11 Member submitting the claim of the right to request exclusion from the Subclass and will
12 affirm the Class Member's intent to be bound by the terms of the Settlement, including the
13 release therein provided.

14 DATED: March 24, 2009

MARK BROWN
LAKIN CHAPMAN LLC

C. BROOKS CUTTER
KERSHAW, CUTTER & RATINOFF LLP

17
18 By: [s] _____
Mark Brown

19 Attorneys for Plaintiffs
20 and the Class

21 DATED: March 24, 2009

GREGORY R. OXFORD
ISAACS CLOUSE CROSE & OXFORD LLP

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23 By: [s] _____
24 Gregory R. Oxford
25 Attorneys for Defendant
26 General Motors Corporation
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Good cause appearing therefor, **IT IS SO ORDERED**

DATED: April 14, 2009



WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE