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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOR PHA and NOU LEE,

Plaintiff,

v.

YIA YANG; YIA YANG dba YIA'S
AUTO SALES; YIA YANG dba
PLATINUM FINANCIAL; YIA'S AUTO
SALES, INC.; and DOES 3 through 10,
inclusive,

Defendants.

No. 2:12-cv-01580-TLN-DAD

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT AND
PROVIDING FOR NOTICE TO THE
CLASS**

The parties to the above-captioned action have agreed to settle pursuant to the terms and conditions set forth in a Preliminary Settlement Agreement (the "Settlement" or "Settlement Agreement"). Under the Settlement, subject to the terms and conditions therein and subject to Court approval, Plaintiffs and the Class¹ would fully, finally, and forever resolve, discharge and release their claims in exchange for Yia Yang, Yia Yang dba Yia's Auto Sales, Yia Yang dba Platinum Financial, and Yia's Auto Sales, Inc. (collectively "Yang" or "Defendant") payment of class relief, service awards, cy pres award, and attorneys' fees.

The Settlement Agreement (ECF No. 141, Ex. 1) has been filed with the Court, and

¹ On February 19, 2014, this Court certified the class under Rule 23 of the Federal Rules of Civil Procedure. (ECF No. 116.)

1 Plaintiff has filed a Motion for Preliminary Approval of Class Action Settlement (ECF No. 139).
2 Upon consideration of Plaintiff's motion, the Settlement and all exhibits thereto, the record in
3 these proceedings, the representations, argument and recommendations of counsel, and the
4 requirements of law, IT IS HEREBY ORDERED AND ADJUDGED as follows:

5 **I. PRELIMINARY APPROVAL OF SETTLEMENT**

6 1. Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval for the
7 compromise of claims brought on a class basis. The purpose of preliminary evaluation of
8 proposed class action settlements is to determine whether the settlement is within the "range of
9 reasonableness." 4 Newberg § 11.26. Settlement negotiations that involve arm's length,
10 informed bargaining with the aid of experienced counsel support a preliminary finding of
11 fairness. *See* Manual for Complex Litigation, Third, § 30.42 ("A presumption of fairness,
12 adequacy, and reasonableness may attach to a class settlement reached in arm's-length
13 negotiations between experienced, capable counsel after meaningful discovery.") (internal
14 quotation marks omitted).

15 2. The Court preliminarily approves the Settlement as within the range of reasonableness and
16 possible final judicial approval. The Court finds that the Settlement was reached in the absence
17 of collusion and is the product of informed, good-faith, arm's length negotiations between the
18 parties and their capable and experienced counsel. The Settlement Agreement is sufficiently fair
19 and reasonable to warrant sending notice to the Class preliminarily.

20 **II. APPROVAL OF NOTICE PROGRAM**

21 3. The Court approves the distribution of the Class Notice, including the Class Notice and
22 the implementation of the Notice Plan. The Court finds that the Notice Program, described in
23 section 3.05 of the Settlement Agreement (ECF No. 141, Ex. 1): is reasonable and the best
24 practicable notice under the circumstances; is reasonably calculated to apprise Class Members of
25 the pendency of the action and of their right to object or opt-out of the proposed Settlement;
26 constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets
27 the requirements of the Federal Rules of Civil Procedure, and requirements of due process under
28 the United States Constitution. It therefore satisfies Rule 23(e) of the Federal Rules of Civil

1 Procedure.

2 4. The Court approves Heffler Claims Group to act as the Claims Administrator. The Claims
3 Administrator shall implement the Notice Program, as set forth below and in the Settlement,
4 using substantially the form of Notice attached as Exhibit B to the Settlement and approved by
5 this Order. (ECF No. 141, Ex. 1 and Ex. B.) Notice shall be provided to Class Members pursuant
6 to the Notice Program, as specified in section 3.05 of the Settlement and approved by this Order.

7 5. The Claims Administrator shall send a copy of the Class Notice by first-class mail to each
8 Class Member. The Claims Administrator shall use its best efforts to complete the mailing of the
9 Class Notice to Class Members at the most current address available within thirty (30) days after
10 the Court's entry of this Order preliminarily approving the proposed Settlement. Class Notice
11 shall be sent by first-class mail, postage prepaid, bearing the return address of the Claims
12 Administrator. The Class Notice shall be substantially in the form attached here as Exhibit B to
13 the Settlement, unless otherwise modified by agreement of the parties and approved by the Court.
14 (ECF No. 141, Ex. B.)

15 6. Defendants and the Claims Administrator shall provide Class Counsel with such
16 reasonable access to the notice process as they may need to monitor compliance with the notice
17 process as described herein. The Claims Administrator will promptly log each Class Notice that
18 is returned as undeliverable and provide copies of the log to Defendants and Class Counsel as
19 requested.

20 7. The Claims Administrator is directed to perform all substantive responsibilities with
21 respect to effectuating the Notice Program, as set forth in the Settlement Agreement. Ten (10)
22 business days prior to the final hearing, the Class Administrator shall provide declarations to the
23 Court, with a copy to Class Counsel, and Defendants' Counsel, attesting to the measures
24 undertaken to provide the Class Notice to the Class Members.

25 **III. OPT-OUTS TO THE SETTLEMENT**

26 8. The Opt-Out Deadline shall be sixty (60) days after the date the Class Notice is mailed to
27 the Class. Class Members who intend to opt out of the settlement must do so by sending a written
28 request for exclusion from the class to the Claims Administrator, such request to be postmarked

1 on or before the Opt-Out Deadline. The written request must contain the excluded person's name
2 and address and must be signed by that person. A Class Member who desires to be excluded but
3 who fails to comply with the opt-out procedure set forth herein shall not be excluded from the
4 class.

5 9. The Claims Administrator shall compile a list of all Class Members who timely send such
6 a written request for exclusion and provide a copy of that list to the Clerk of the Court and to
7 Class Counsel no later than ten (10) calendar days after the Opt-Out Deadline.

8 10. Any Class Member who does not submit a timely, written request for exclusion will be
9 bound by all proceedings, orders and judgments in the action. Class Members who have not
10 timely excluded themselves from the Settlement Class are preliminarily enjoined from filing,
11 commencing, prosecuting, intervening in, or participating as a plaintiff, claimant, named plaintiff
12 representative of a class, or class member in any other lawsuit or administrative, regulatory,
13 arbitration or other proceeding in any jurisdiction based on, relating to or arising out of (i) the
14 claims and causes of action in the Action, or the facts and circumstances relating thereto, or (ii)
15 the Released Claims.

16 **IV. OBJECTIONS TO THE SETTLEMENT**

17 11. A Class Member who has not submitted a timely request for exclusion from the
18 Settlement Class may object to the fairness, reasonableness or adequacy of the proposed
19 Settlement, or to the attorneys' fee application.

20 12. The Objection Deadline shall be sixty (60) days after the date the Class Notice is mailed
21 to the Class. An intent to object must be sent to the Clerk of the Court by first-class mail,
22 postmarked on or before the Objection Deadline. An intent to object must also be sent to Class
23 Counsel, and counsel for Defendants by first-class mail, postmarked on or before the Objection
24 Deadline.

25 13. To be effective, any objections must comply in all respects with the terms and conditions
26 as set forth in the Class Notice approved herein. All objections must include a clear statement of
27 each objection and the reasons thereto, and must contain a statement concerning whether the
28 Objector intends to appear at the final approval hearing.

1 14. If an objection is overruled, the Objector will be bound by the terms of settlement.

2 15. Members of the Class who fail to file and serve timely written objections in the manner
3 specified above shall be deemed to have waived any objections and shall be foreclosed from
4 making any objections to the Settlement Agreement.

5 **V. STAY OF PROCEEDINGS**

6 16. This action is stayed pending Final Approval of the Settlement, except such actions as
7 may be necessary to implement the Settlement Agreement and this Order.

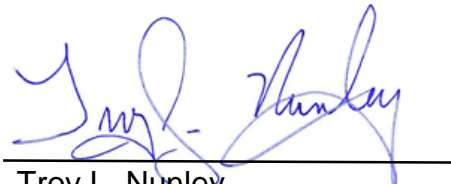
8 **VI. FINAL APPROVAL HEARING**

9 17. The Court directs that a Final Approval Hearing shall take place on April 23, 2015, at
10 2:00 PM to determine whether the proposed Settlement is fair, reasonable and adequate, and in
11 the best interests of the Settlement Class, and whether judgment should be entered dismissing the
12 action on the merits and with prejudice. In the event that the Court approves this proposed
13 Settlement, the Court will consider the amount of an award of fees to Class Counsel subject to the
14 limits of the Settlement Agreement.

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16 IT IS SO ORDERED.

17 Dated: January 7, 2015

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Troy L. Nunley
United States District Judge