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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MOHAMMAD SALIMI; AUGUST
GALARAGA, ALVIN LEUNG, and VELIA
SERRANO

Plaintiff,

vs.

BMW FINANCIAL SERVICES NA, LLC;
ASSET ACQUISITION GROUP, LLC; and
DOES 1-50, inclusive,

Defendants.

Case No. 3:12-cv-1754 JSW

CLASS ACTION

**[PROPOSED] ORDER CERTIFYING
CLASS FOR SETTLEMENT PURPOSES,
GRANTING PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

Unlimited Civil Case

Date: January 24, 2014

Time: 9:00 a.m.

Dept: Courtroom 11, 19th Floor

Hon. Jeffery S. White

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2 On January 24, 2014, Plaintiffs MOHAMMAD SALIMI, AUGUST GALARAGA,
3 ALVIN LEUNG and VELIA SERRANO filed a Motion (1) for Conditional Certification of a
4 Settlement Class; (2) for Preliminary Approval of Settlement Agreement; (3) for Order for
5 Distribution of Class Notice; and (4) for Order Setting Hearing For Final Approval, including
6 terms and conditions for requests for exclusion and objectors, if any there may be.

7 With the Motion for Preliminary Approval, Plaintiffs also filed Points and Authorities in
8 Support of the Motion, the Proposed Settlement Agreement, the Proposed Class Notice, and
9 Affidavits. There is no opposition to the Motion. Having read and considered all papers provided,
10 and having reviewed the Proposed Settlement Agreement and proposed Class Notice in this
11 matter, THE COURT HEREBY GRANTS THE MOTION AND ORDERS AS FOLLOWS:

12 1. This Order of Preliminary Approval incorporates the Settlement Agreement, and the terms
13 used in this Order shall have the meanings and/or definitions given to them in the Settlement
14 Agreement, as submitted to the Court with the Motion for Preliminary Approval of Class Action
15 Settlement.

16 2. For purposes of the Settlement, and conditioned upon the Settlement receiving final
17 approval following the Final Approval Hearing and upon the occurrence of the Effective Date of
18 Settlement, this Court hereby conditionally certifies a Settlement Class, defined as follows and
19 subject to the stated exclusions below:

20 (A) The phrase "Settlement Class" is defined as all persons:

- 21 1) who purchased a motor vehicle in California and entered into a conditional
22 sales contract with any person or entity that was assigned to BMW FS.;
- 23 2) whose motor vehicle was repossessed or voluntarily surrendered in
24 California, and was not reinstated or redeemed; and
- 25 3) who were issued an NOI by BMW FS between September 6, 2008 to
January 15, 2013

26 (B) The "Settlement Class" excludes:

- 27 1) those persons who have filed bankruptcy proceedings,
- 28 2) accounts of individuals who are deceased,

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- 3) those persons with a Conditional Sale Contract entered into outside of California,
- 4) those persons whose vehicles were repossessed outside of California out of state contracts or repossessions.
- 5) persons who signed releases with BMW FS from any liability for Deficiency Balance payments on their accounts prior to January 15, 2013
- 6) those persons against whom BMW FS obtained judgments prior to January 15, 2013.

3. Without prejudice to Final Approval, the Settlement, on the terms and conditions stated therein, is preliminarily approved by this Court as being fair, reasonable and adequate, free of collusion or indicia of unfairness, and within the range of possible final judicial approval. This Court specifically finds that the Settlement resulted from extensive arms-length negotiation, the Settlement is sufficient to warrant dissemination of notice of the Settlement, and of the Final Approval Hearing on said Settlement, to the Plaintiff Settlement Class, and the Representative Plaintiffs and Class Counsel provisionally are found to fairly and adequately represent the interests of the Class and to satisfy the requirements to be representatives of and counsel to the Class.

4. Pursuant to the parties' stipulation, the Court shall enter an injunction in the form attached as **Exhibit A** to the Settlement Agreement. The injunction shall automatically become a permanent injunction upon Final Approval.

5. A Final Approval Hearing shall be held on February 6, 2015 at 9:00a.m., 2014 at _____ a.m./p.m. before the Honorable Jeffrey S. White in Courtroom ⁵ ~~11~~ of UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA ~~SAN FRANCISCO DIVISION~~, located at ~~450~~ 1301 Clay Street, Oakland, CA 94612 ~~Golden Gate Avenue, San Francisco, CA 94102~~, to consider: (a) the fairness, reasonableness and adequacy of the proposed Settlement; (b) whether the Settlement should be finally approved by this Court; (c) the application of Class Counsel for an award of Attorneys' Fees and Expenses; (d) the application of an incentive award to the Class representatives; and (e) such other matters as this Court may deem proper and necessary.

6. The Court approves Kurtzman Carson Consultants as the Class Administrator, to perform

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2 the duties set forth in the proposed Settlement Agreement.

3 7. The Notice of Proposed Settlement is attached to the Settlement Agreement as Exhibit C
4 and is hereby approved for the purpose of notifying the Plaintiff Settlement Class as to the
5 proposed Settlement, the Final Approval Hearing, and the rights of members of the Class, and it
6 shall be sent substantially in the form approved to the members of the Plaintiff Settlement Class.

7 8. The notice shall be sent by the Class Administrator to the respective members of the
8 Plaintiff Settlement Class via first class postage pre-paid U.S. Mail on or before ~~20 days from the~~
9 ~~October 20, 2014~~
issuance of this Order of Preliminary Approval.

10 9. 35 days prior to the Final Approval Hearing, the Class Administrator shall provide
11 declarations to the Court, with a copy to Class Counsel and counsel for BMW FS, attesting to the
12 measures undertaken to provide Notice to the members of the Plaintiff Settlement Class.

13 10. The Notice of Proposed Settlement to the Settlement Class, as set forth in Exhibit C to the
14 Settlement Agreement, and approved by this Order, is the best notice practicable, and is
15 reasonably calculated, under the circumstances, to apprise the members of the Plaintiff Settlement
16 Class of the pendency of the Action and their right to participate in, object to, or exclude
17 themselves from the Settlement. This Court further finds that the Notice of Proposed Settlement
18 is due and sufficient notice of the Final Approval Hearing, the Settlement, the application for
19 attorneys' fees, and expenses, and incentive award, and other matters set forth therein, and that
20 the Notice of Proposed Settlement fully satisfies Federal Rules of Court and due process of law,
21 to all persons entitled thereto. As set forth in the Settlement Agreement, BMW FS shall be
22 responsible for all costs and expenses incurred in connection with disseminating the Notice to the
23 Class.

24 11. Any Settlement Class Member who intends to object ("Objector") to the fairness,
25 reasonableness and adequacy of the Settlement ("Objections") must file a written Objection with
26 the class administrator and mail a copy to counsel for BMW FS and to Class Counsel at the
27 December 22, 2014
addresses set forth below, postmarked not later than ~~sixty (60) days after the date the Class Notice~~
28 is mailed to the Settlement Class. Any Objector must set forth his/her full name, current address
and telephone number. Objections must be served:

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2 Upon Class Administrator at:

3 KURTZMAN CARSON CONSULTANTS
4 75 Rowland Way, Suite 250
5 Novato, CA 94945
6 Telephone: (415) 798-5900

7 Upon BMW FINANCIAL SERVICES at:

8 JEFFER MENGELS BUTLER & MITCHELL LLP
9 MICHAEL J. HASSEN
10 CHRISTOPHER H. DOYLE
11 Two Embarcadero Center, Fifth Floor
12 San Francisco, CA 94111-3813
13 Telephone: (415) 398-8080
14 Facsimile: (415) 398-5584

15 Upon Class Counsel at:

16 KEMNITZER, BARRON & KRIEG
17 BRYAN KEMNITZER
18 NANCY BARRON
19 445 Bush Street, 6th Floor
20 San Francisco, CA 94108
21 Telephone: (415) 632-1900
22 Facsimile: (415) 632-1901

23 CHAVEZ & GERTLER LLP
24 MARK A. CHAVEZ Bar No. 090858
25 NANCE F. BECKER Bar No. 099292
26 DAN L. GILDOR Bar No. 223027
27 42 Miller Ave.
28 Mill Valley, CA 94941
Telephone: (415) 381-5599
Facsimile: (415) 381-5572

12. Objectors must state in writing all Objections and the reasons thereto, and a statement whether the Objector intends to appear at the Final Approval Hearing(s). No Objector shall be entitled to be heard at the Final Approval Hearing, and no written objections or briefs submitted by an Objector shall be received or considered by this Court at the Final Approval Hearing, unless the Objector has fully complied with all terms and conditions set forth in the Notice of Proposed Settlement as approved herein, and as set forth in the Settlement Agreement. If an Objection is overruled, the Objector will be bound by the terms of the Settlement. Members of the Class who

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2 fail to file and serve timely written objections in the manner specified above shall be deemed to
3 have waived any objections and shall be foreclosed from making any objection (whether by
4 appeal or otherwise) to the Settlement Agreement.

5 13. Members of the Plaintiff Settlement Class may elect to exclude themselves from the
6 Settlement Agreement, relinquishing their rights to any and all benefits under the Settlement
7 Agreement. Members of the Plaintiff Settlement Class who exclude themselves from the
8 Settlement will not release their claims pursuant to the release set forth in the Settlement
9 Agreement. A Plaintiff Settlement Class member wishing to exclude himself/herself from the
10 Settlement must notify by letter postmarked no later than ~~sixty (60) days after the date the Class Notice~~
11 ~~is mailed to the Plaintiff Settlement Class to the class administrator~~ ^{than December 22, 2014} and mailing a copy to counsel
12 for BMW FS and class counsel at the addresses set forth in ¶11, which in all respects complies
13 with the terms and conditions for exclusion as set forth in the Notice of Proposed Settlement,
14 approved herein. Members of the Plaintiff Settlement Class who fail to submit a valid and timely
15 request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Order
16 and Judgment, regardless of whether they have requested exclusion from the Settlement.

17 14. Any member of the Plaintiff Settlement Class who submits a timely request for exclusion
18 may not file an Objection to the Settlement and shall be deemed to have waived any rights or
19 benefits under the Settlement Agreement.

20 15. The Court shall hold a Final Approval Hearing in this matter on February 6, 2015, ~~2014~~.
21 Class Counsel shall file their Motion for Final Approval and all supporting papers not later than
22 thirty-five (35) ~~Court~~ days before the Final Approval Hearing. Should counsel for BMW FS
23 desire to file briefing in connection with Final Approval, such briefing shall be filed no later than
24 ~~nine (9) Court~~ ²¹ days before the Final Approval Hearing.

25 16. Class Counsel shall file their motion for award of attorneys' fees and costs ~~at least twenty-~~
26 ~~one (21) days prior to the date for Class Members to object to the Settlement Agreement.~~
by no later than December 1, 2014

27 17. In the event that (a) this Court does not finally approve the settlement as provided in the
28 Settlement Agreement; (b) this Court does not enter the Final Order and Judgment as provided in
all material respects and substantial form set forth in the Settlement Agreement; or (c) the

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2 Settlement does not become final for any other reason, and the Parties following reasonable
3 efforts, do not agree in writing to modify the Settlement Agreement and the Settlement is not
4 consummated, the Settlement Agreement shall be null and void and any order or judgment
5 entered by this Court in furtherance of this Settlement shall be vacated *nunc pro tunc*. In such a
6 case, the Parties shall proceed in all respects as if the Settlement Agreement had not been
7 executed and the Parties shall in no way be prejudiced in proceeding with or defending this
8 litigation, the conditional class certification effected herein will be null and void, and BMW FS
9 shall have the right to object to certification of the Plaintiff Settlement Class or any other class at
10 any future time.

11 18. For the benefit of the Plaintiff Settlement Class and to protect this Court's jurisdiction, this
12 Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation
13 thereof in accordance with the Settlement preliminarily approved herein and the related orders of
14 this Court.

15 19. The parties are directed to carry out their obligations under the Settlement Agreement.

16 20. Class Counsel shall serve a copy of this Order on all named parties or their counsel within
17 seven (7) days of receipt.

18 Summary of Applicable Dates

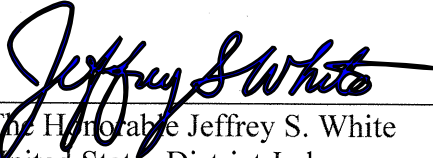
19 1.	Preliminary Approval Order served on parties	January 24, 2014 October 6, 2014
20 2.	Class Notice to be sent by Class Administrator (Settlement Agreement and Release ¶ 2.04 / Preliminary Approval Order ¶ 8)	February 13, 2014 (20 days after Preliminary Approval) October 20, 2014
21 3.	Motion for Attorneys' Fees and Costs filed by (Settlement Agreement and Release ¶ 3.05 / Preliminary Approval Order ¶ 16)	March 24, 2014 (21 days prior to the date for Class Members to object to the Settlement Agreement) Dec. 1, 2014
22 4.	Exclusion from the Settlement Class postmarked by (Preliminary Approval Order ¶ 13)	April 14, 2014 (60 days after the date the Class Notice is mailed) December 22, 2014
23 5.	Objection to the Settlement postmarked by (Preliminary Approval Order ¶ 11)	April 14, 2014 (60 days after the date the Class Notice is mailed) Dec. 22, 2014
24 6.	Motion for Final Approval filed by (Preliminary Approval Order ¶ 15) (CCP §1005)	January 2, 2015 (35 Court days before the Final Approval hearing)
25 7.	Defendants' Pleadings re Final Approval (Preliminary Approval Order ¶ 15)	January 16, 2015 (9 Court days before the Final Approval Hearing)

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8.	Class Administrator Declaration filed by (Settlement Agreement and Release ¶ 2.04 / Preliminary Approval Order ¶ 9)	January 2, 2015 (35 days prior to the Final Approval Hearing)
9.	Final Approval hearing	February 6, 2015

SO ORDERED

Dated: September 29, 2014



 The Honorable Jeffrey S. White
 United States District Judge