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 AUTOVEST, LLC

12
 13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF NEVADA**

15 * * *

16 CARLOS EFRAIN LEONEL
 17 GARCIA, an individual, on behalf of
 himself and all those similarly
 18 situated,

19 Plaintiff,

20 vs.

21
 22 AUTOVEST, LLC, a foreign limited
 liability company;

23
 24 Defendant.

CASE NO.: 2:16-cv-00601-JAD-CWH

**ORDER GRANTING JOINT MOTION
 TO MODIFY ORDER GRANTING
 PRELIMINARY APPROVAL OF
 CLASS ACTION SETTLEMENT AND
 NOTICE TO CLASS [DOC. NO. 60]**

[ECF No. 62]

1 Plaintiff Carlos Efrain Leonel Garcia (“Plaintiff”), intervenor Lorraine Belt
2 (“Belt”) and defendant Autovest, L.L.C. (“Autovest”) (collectively, “the Parties”), by
3 and through their undersigned counsel, hereby stipulate and jointly move for an
4 Order modifying the Court’s Order preliminarily approving the class action
5 settlement and class action notice in this matter (Doc. No. 60). In support of the joint
6 motion, the Parties state the following:

7 1. On March 13, 2017, the Court granted the Parties’ Joint Motion for
8 Preliminary Approval of Class Action Settlement and Notice to Class (“Preliminary
9 Approval Order”). Doc. No. 60. The Preliminary Approval Order set the following
10 deadlines:

- 11 (a) March 27, 2017 - deadline for settlement administrator to mail
12 notice to class members via first class United States Mail, postage
13 prepaid, at each class member’s last known address as contained
14 in Autovest’s records;
- 15 (b) May 1, 2017 - deadline for class members to opt out of the class;
- 16 (c) July 7, 2017 - deadline for class members to object to the
17 proposed settlement and file all papers in support of objection;
- 18 (d) July 14, 2017 - deadline for filings in support of the proposed
19 settlement and for class counsel to file a motion for attorneys’
20 fees and costs; and
- 21 (e) July 28, 2017 at 9:00 a.m. - hearing on the fairness and
22 reasonableness of the settlement and to determine whether final
23 approval shall be given to it and on the request for attorneys’
24 fees and costs by class counsel.

25 2. The “Class” is defined as all persons who were sued by Autovest
26 between March 17, 2015 and the future date of entry of a final judgment in this
27 action for the deficiency balance owed under a Simple Interest Vehicle Contract
28 Security Agreement (“Contract(s)”) and where the Contracts were secured by a lien

1 on a motor vehicle. Excluded from the Class are persons who filed for bankruptcy
2 and whose debts under the Contracts were discharged, and individuals who already
3 executed a release of any such claims against Autovest.

4 3. The Class is composed of two subclasses: a “Judgment Subclass” and a
5 “Non-Judgment Subclass.” The Judgment Subclass is comprised of class members
6 against whom Autovest obtained a judgment before the date of a final judgment in
7 this action. The Non-Judgment Subclass is comprised of class members against
8 whom Autovest had not obtained a judgment before the date of a final judgment in
9 this action. Based on a review of its records, Autovest initially believed that the
10 Class consisted of 16 Judgment Subclass members and 52 Non-Judgment Subclass
11 Members, as identified in paragraphs 4 and 5 of the Class Action Settlement
12 Agreement (“Settlement Agreement”). Doc. No. 55-1 at ECF p. 5.

13 4. Pursuant to the Settlement Agreement, Autovest agreed to apply a credit
14 of \$100 to the account of each Judgment Subclass member, and waive the amounts
15 owed by each Non-Judgment Subclass member.

16 5. On March 27, 2017, the settlement administrator mailed the class notice
17 approved by the Court to the class members. Doc. No. 61.

18 6. On April 19, 2017, counsel for Plaintiff and Belt provided a list to
19 Autovest’s counsel of persons they believed should have been included in the class
20 list, but were not. Upon reviewing the list, Autovest concluded that some class
21 members had been inadvertently left off the class list.

22 7. On May 3, 2017, the Parties agreed that, after Autovest conducted
23 further investigation to determine the identity and number of additional class
24 members, the Parties would execute an amendment to the Settlement Agreement that
25 includes the previously omitted class members, jointly move the Court to approve the
26 amendment and an amended class notice, and request a continuance of the settlement
27 deadlines in order to provide the amended notice to the Class.

1 8. Based on the information provided by Plaintiff and Belt’s counsel, and
2 after performing its own further investigation, Autovest determined that 31 class
3 members had been inadvertently excluded from the class list (9 Judgment Subclass
4 members and 22 Non-Judgment Subclass members), and one person had been
5 incorrectly included on the list. Accordingly, the Class consists of 25 Judgment
6 Subclass members and 73 Non-Judgment Subclass Members.

7 9. The vast majority of class members that were omitted were co-
8 borrowers on the same loan as a class member who had been included on the original
9 class list. As a result, those co-borrowers were already scheduled to receive relief as
10 part of the settlement, however, they have not been provided notice of the settlement.

11 10. The Amendment to the Class Action Settlement Agreement executed by
12 the Parties (“Amendment”), which is attached hereto as **Exhibit 1**, makes the
13 following changes to the Settlement Agreement: (1) the number of Non-Judgment
14 Subclass members has been increased from 52 to 73; (2) the number of Judgment
15 Subclass members has been increased from 16 to 25; and (3) the amount of the debts
16 of Non-Judgment Subclass members being waived by Autovest has been increased
17 from \$710,467.34 to \$738,096.74. The Amendment attaches as **Exhibit A** an
18 Amended Notice of Proposed Class Action Settlement and Court Hearing
19 (“Amended Notice”), which reflects the increase in the total amount of debt waiver
20 for the Non-Judgment Subclass. These are the only substantive changes to the
21 previously approved Settlement Agreement and class notice.

22 11. The Parties stipulate and jointly request that the Court enter an Order
23 approving the Amendment, Amended Notice and continuing the class settlement
24 deadlines (“Order”), as follows:

- 25 (a) deadline for settlement administrator to mail Amended Notice to
26 class members = 10 days from Order;
- 27 (b) deadline for class members to opt out of the class = 40 days from
28 Order;

- 1 (c) deadline for class members to object to the proposed settlement =
2 70 days from Order;
3 (d) deadline for filings in support of the proposed settlement and for
4 class counsel to file a motion for attorneys' fees and costs = 80
5 days from Order; and
6 (e) final approval hearing = 100 days from order.

7 12. Good cause exists for the Court to approve the Amendment and
8 Amended Notice, because they do not materially change the terms of the settlement.
9 The Amendment and Amended Notice simply seek to include certain class members
10 that were inadvertently excluded from the original class list. The class settlement
11 deadlines and final approval hearing should be continued so that class members have
12 an opportunity to receive and, if they choose, respond to the Amended Notice.

13 Accordingly, for the reasons stated herein, the Parties stipulate and jointly
14 request the Court approve the Amendment, the Amended Notice and reset the class
15 settlement schedule as discussed herein.

16 **IT IS SO STIPULATED.**

17 DATED: June 16, 2017

SIMMONDS & NARITA LLP

18 /s/R. Travis Campbell
19 R. TRAVIS CAMPBELL (pro hac vice)
20 California Bar #271580
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22 44 Montgomery Street, Suite 3010
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24 DATED: June 16, 2017

LEGAL AID CENTER OF
SOUTHERN NEVADA, INC.

25 /s/Dan L. Wulz
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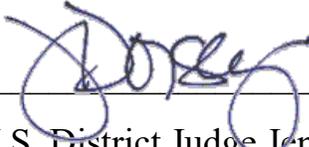
1 **ORDER**

2 Pursuant to the Stipulation and Joint Request of the Parties, the Court hereby
3 ORDERS as follows:

- 4 1. The Amendment to the Class Action Settlement Agreement
5 (“Amendment”) executed by the Parties is preliminarily approved.
- 6 2. The Amended Notice of Proposed Class Action Settlement and Court
7 Hearing attached to the Amendment as **Exhibit A** is approved.
- 8 3. The schedule set forth in the Order Granting the Parties’ Joint Motion for
9 Preliminary Approval of Class Action Settlement and Notice to Class
10 (Doc. No. 60) is hereby amended was follows:
- 11 (a) July 3, 2017 - deadline for settlement administrator to
12 mail notice to class members via first class United States Mail,
13 postage prepaid, at each class member’s last known address as
14 contained in Autovest’s records;
- 15 (b) August 2, 2017 - deadline for class members to opt out of the
16 class;
- 17 (c) September 1, 2017 - deadline for class members to object to the
18 proposed settlement and file all papers in support of objection;
- 19 (d) September 11, 2017 - deadline for filings in support of the
20 proposed settlement and for class counsel to file a motion for
21 attorneys’ fees and costs; and
- 22 (e) October 2, 2017 at 1:30 p.m. - hearing on the fairness and
23 reasonableness of the settlement and to determine whether final
24 approval shall be given to it and on the request for attorneys’
25 fees and costs by class counsel.

26 IT IS SO ORDERED.

27 Dated: June 23, 2017

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U.S. District Judge Jennifer A. Dorsey