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F I L E D
Clerk of the Superior Court

DEC 23 2011

4 Attorney for Plaintiff and the Provisionally-Certified Class

BY: A. LUM

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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO – NORTH COUNTY REGIONAL CENTER**

14 BRENDA KINNEY, *et al.*,
15 Plaintiffs,
16 vs.
17 VINCE DIXON FORD, INC., *et al.*,
18 Defendants.

CASE NO. 37-2010-00059153-CU-BT-NC

**~~PROPOSED~~ ORDER GRANTING
JOINT MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: December 23, 2011
Time: 1:30 p.m.
Assigned to: Hon. Thomas P. Nugent
Department: N-30

1 On December 23, 2011, in Department N-30, San Diego County Superior
2 Court, North County Regional Center, the Hon. Thomas P. Nugent presiding,
3 Plaintiff and Class Representative Brenda Kinney's ("Kinney") and Defendant
4 Vince Dixon Ford, Inc.'s ("Defendant") Joint Motion for Final Approval of Class
5 Action Settlement came regularly on for hearing. Michael R. Vachon, Esq.
6 appeared on behalf of Plaintiff and Class Representative Brenda Kinney, and
7 Arjun Rao, Esq. appeared on behalf of Defendant Vince Dixon Ford, Inc.

8
9 No class members filed objections to the proposed settlement or appeared
10 at the hearing.

11 After considering the moving papers, supporting declarations, the
12 documents lodged with the Court in connection with this motion, and the oral
13 arguments of counsel, with good cause appearing therefore, the Court made the
14 following findings:

15 1. No Collusion in Settlement Negotiations

16 The parties' settlement is the result of arm's-length negotiations.

17
18 2. Sufficient Notice of Proposed Settlement

19 The parties (via the Settlement Administrator, Kurtzman Carson
20 Consultants, LLC) disseminated sufficient notice to Class members adequately
21 describing the terms of the proposed settlement and explaining how the Class
22 members could opt-out of the settlement if they wished to do so.

23 3. The Strength of Plaintiff's Case

24 As set forth in the operative complaint, Kinney and the Class members have
25 potentially viable claims, subject to the risks described below.

26
27 4. Risk, Expense, Complexity and Likely Duration of Litigation

28 Class members would face substantial risks by foregoing this settlement

1 including the following: (i) that Defendant might prevail on its pending Petition
2 to Compel Arbitration forcing Kinney to arbitrate her claims on an individual
3 basis only, and resulting in Class members receiving no recovery at all in this
4 litigation; (ii) that if the Court denies the pending petition to compel arbitration
5 Defendant might exercise its automatic right of appeal under Code of Civil
6 Procedure Section 1294(a), resulting in substantial delays, expense, and
7 uncertainty; (iii) that Defendant might establish the California Vehicle Leasing
8 Act's complete defense of "bona fide error," resulting in the Class members
9 receiving no recovery at all in this litigation; (iv) that Class members might not be
10 able to prove their entitlement to rescission of their lease contracts under Civil
11 Code Section 2988.7; (v) that Class members might have their potential statutory
12 damages award substantially reduced based on a consideration of the factors set
13 forth in Civil Code Section 2988.5(b); (vi) if Class members are able to prove their
14 entitlement to rescission of their lease contracts, that their restitution amounts
15 might be substantially reduced by a large equitable offset for their use of the
16 vehicles; and (vii) that this case might be litigated for several more years before
17 any recovery of any kind is awarded.
18
19

20 5. Risk of Maintaining Class Certification Through Trial

21 The above-described risk that the Court might grant Defendant's pending
22 Petition to Compel Arbitration would result in Kinney being forced to arbitrate
23 her claims on an individual basis only, with the Class members receiving no
24 recovery whatsoever.
25

26 6. The Amount Offered in Settlement

27 Defendant Vince Dixon Ford, Inc. is stipulating to an injunction that will
28 compel it to modify its business policies to prevent future illegal conduct of the

1 type alleged in Plaintiff's complaint (*i.e.*, failing to itemize the cost of optional
2 items in vehicle lease contracts). Further, each Class member is receiving \$200 in
3 monetary compensation, which is likely equivalent to approximately eight times
4 their actual damages, and which represents 31% of the maximum possible
5 statutory damages award in this lawsuit.

6 7. The Stage of Litigation & Extent of Discovery

7 Kinney's and Class counsel's investigation and discovery provided sufficient
8 information for meaningful negotiation and settlement evaluation.

9 8. The Experience and Views of Counsel

10 Class counsel is experienced in both class action litigation and consumer
11 lawsuits against car dealerships, and he reasonably opines that this settlement is
12 in the best interests of the Class members.

13 9. The Presence of a Government Participant

14 No government entity is participating in this litigation.

15 10. Class Member Reaction to the Settlement

16 The facts that no Class members objected to the settlement and none opted-
17 out indicate a positive reaction by Class members to the settlement.

18 11. Attorney's Fees, Costs, and Expenses Are Reasonable

19 Based on Class counsel's lodestar amount, regular hourly rate, and the
20 applicable enhancement factors (including the contingent risk present in this case
21 and the results obtained in this litigation), Defendant Vince Dixon Ford, Inc.'s
22 payment for attorney's fees, costs and expenses in the amount of \$55,000 for the
23 services performed by Class counsel is fair, adequate, and reasonable.

24 12. Class Representative Enhancement Payment Reasonable

25 Based on the length of this litigation, the financial risk that Plaintiff
26

1 incurred, and the benefits conferred upon the Class and the general public,
2 Defendant Vince Dixon Ford, Inc.'s \$2,000 enhancement payment to Class
3 Representative Brenda Kinney is fair, adequate, and reasonable.

4 13. CARS is Adequate Cy Pres Fund Recipient

5 Consumers for Automobile Reliability and Safety ("CARS") is a non-profit
6 consumer advocacy organization that educates consumers on how to avoid being
7 defrauded by illegal car dealership tactics, and lobbies state and federal
8 governments to improve legal protections for vehicle purchasers. Accordingly, it
9 is an appropriate recipient of the *cy pres* fund created by this settlement.
10

11
12 Based upon the above-stated findings, the Court hereby ORDERS the
13 following:

- 14 1. the proposed settlement is fair, adequate, and reasonable; and
- 15 2. final approval of the proposed settlement is granted.

16
17
18 Date: DEC 23 2011

THOMAS P. NUGENT

Hon. Thomas P. Nugent
Judge of the Superior Court of the State of California

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PROOF OF SERVICE
(Sections 1013a, 2015.5 C.C.P.)

F I L E D
Clerk of the Superior Court

DEC 23 2011

Kinney v. Vince Dixon Ford, Inc., et al.

(San Diego County Superior Court Case No.37-2010-00059153-CU-BT-NC)

BY: A. LUM

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is: 16935 West Bernardo Drive, Suite 175, San Diego, California 92127.

On the date shown below, I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

on the interested parties in this action addressed as follows:

MANNING, LEAVER, BRUDER & BERBERICH

Attn.: Arjun Rao, Esq.

5750 Wilshire Boulevard, Suite 655

Los Angeles, California 90036-3637

Facsimile: (323) 937-6727

email: arao@manningleaver.com

(Attorneys for Defendant Vince Dixon Ford, Inc.)

- [X] **BY E-MAIL:** Based upon an agreement between the parties to accept service by e-mail, I caused the documents to be sent to the persons at the e-mail addresses listed above. The parties have executed a written agreement that such service, in conjunction with U.S. Mail service (which has also been made), constitutes timely service for a motion hearing date of December 23, 2011 or later. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- [X] **BY U.S. MAIL:** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:
- (1) [] deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) [x] placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the business's practice for collecting and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage thereon fully prepaid, at San Diego, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true, and that this proof of service was executed on December 1, 2011, at San Diego, California.

Svetlana P. Morozovskaya