

1 KEMNITZER, BARRON & KRIEG, LLP
2 BRYAN KEMNITZER Bar No. 066401
3 NANCY BARRON Bar No. 099278
4 KRISTIN KEMNITZER Bar No. 278946
5 354 Pine St., 5th Floor
6 San Francisco, CA 94104
7 Telephone: (415) 632-1900
8 Facsimile: (415) 632-1901

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
05/07/2019 at 10:36:00 AM
Clerk of the Superior Court
By Sarah Loose, Deputy Clerk

Attorneys for Plaintiff RICARDO MELENDEZ, ANDRES OROZCO; MARTHA LOMELI; and
CARLOS CRUZ and the certified class

9
10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ORANGE

12 RICARDO MELENDEZ; ANDRES
13 OROZCO; MARTHA LOMELI; and CARLOS
14 CRUZ,

Plaintiffs

vs.

15 K STREET FINANCE, INC. dba MULLEN
16 FINANCE PLAN; and DOES 1 through 50,
17 inclusive,

Defendants

Case No. 30-2014-00722412-CU-BT-CXC

CLASS ACTION

**DECLARATION OF BRYAN
KEMNITZER IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Unlimited Civil Case

Date: June 7, 2019

Time: 9:00 a.m.

Dept: CX104

Hon. William Claster

No Reservation Number Needed per 3/29/19

Minute Order

Assigned for all purposes to Hon. William
Claster – Dept. CX104

21 _____/
22
23 I, BRYAN KEMNITZER, declare:

24 1. I am an attorney licensed to practice law in all of the courts of the State of California
25 including the court in which this Action is pending. Our law firm, Kemnitzer, Barron, & Krieg,
26 LLP, was retained by Plaintiffs in this litigation. I have personal knowledge of the information
27 stated below, based upon my knowledge of the facts and review of the file, and I am competent
28 to testify thereto.

1 2. The facts and procedural history stated in the accompanying memorandum in support of
2 this motion are accurate to the best of my knowledge based upon my review of the file,
3 discussions with opposing counsel and other attorneys at my firm, evaluation of documents
4 produced, research, and discovery in this matter.

5 3. Attached hereto as **Exhibit A** is a true and correct copy of the fully executed Settlement
6 Agreement, reached among the parties in this putative Class Action, which is the subject of this
7 Preliminary Approval Motion. All capitalized terms are defined in the Settlement Agreement and
8 Release

9 **I. CLASS ACTION CASE**

10 4. This case was brought as a putative Class Action based upon what Plaintiffs RICARDO
11 MELENDEZ, ANDRES OROZCO, MARTHA LOMELI, and CARLOS CRUZ (“Plaintiffs”)
12 contend to be Defendant K STREET FINANCE INC. dba MULLEN FINANCE PLAN’s
13 (“Mullen Finance”) unlawful, unfair and deceptive practices following repossession of Motor
14 Vehicles from California consumers in violation of under the Unfair Competition Law (Business
15 & Professions Code §17200 *et seq.*), the Rees-Levering Automobile Sales Finance Act, Civil
16 Code §2981 *et seq.* (hereinafter “Rees-Levering Act” or “the Act”), and other applicable laws.
17 The Court certified the case as a Class Action on February 3, 2017. The Parties reached a
18 settlement in February 2019.

19 **II. APPOINTMENT OF CLASS REPRESENTATIVES AND FIRM AS CLASS**
20 **COUNSEL**

21 5. Our law firm, Kemnitzer, Barron, & Krieg, LLP, is requesting that the Court appoint our
22 firm as Settlement Class Counsel and appoint Plaintiffs as Class Representatives. As set forth in
23 the section dealing with my background, Nancy Barron’s background, Kristin Kemnitzer’s
24 background, and the background of the firm, our firm has extensive experience in class actions,
25 particularly with regard to class actions relating to the Rees-Levering Automobile Sales Finance
26 Act and the failure of financial institutions to comply with the Act after repossession of vehicles.

27 6. We have represented more than 260,000 consumers in similar Rees-Levering Automobile
28 Sales Finance Act cases. We have been able to obtain substantial relief for those consumers

1 including having financial institutions agree not to collect well over \$2.2 billion worth of
2 deficiencies. Class members have also received recovery of almost \$35 million in restitution
3 from NOI class actions in which we have been class counsel. Attached as **Exhibit B**, is a list of
4 some of the NOI class actions our firm has handled.

5 **III. TERMS OF SETTLEMENT**

6 7. The terms of the settlement of this case give the class members a significant portion of
7 the relief they could have achieved if we had succeeded at trial. The entire class of
8 approximately 1,206 class member accounts, whose outstanding Deficiency Balances total
9 approximately \$2,478,536.74, will receive automatic and immediate relief from this alleged debt
10 and will receive automatic credit repair relief. Defendant has collected approximately
11 \$945,644.80 from class members in payment on these alleged Deficiency Balances. Mullen
12 Finance agrees to refund \$475,000.00 to class members who paid any amount toward his or her
13 alleged Deficiency Balance. There is no claims process. ¶5.01¹. These figures are based upon
14 discovery in this case and Mullen Finance's representations which they agree to verify before the
15 hearing on this matter.

16 8. In arriving at this settlement, which is a compromise on the part of all Parties, we
17 examined the evidence, the risks of trial and potential delay of protracted litigation, the various
18 outcomes to be expected from a trial on merits and/or appeal on procedural or substantive issues,
19 and the potential effect of these outcomes on Plaintiffs and the class. The Parties attended five
20 mediations with three different mediators over a four-year period to reach this Agreement. It was
21 not until the eve of trial that the Parties were able to settle the matter. We determined that, in our
22 experience, this settlement was the best outcome for all named Parties, as well as absent class
23 members, under the circumstances of this case.

24 9. By way of example, the following chart sets forth a comparison of results that could have
25 been achieved at trial compared with the results of the settlement.

26 //

27 //

28 ¹ All "¶" references are to the Settlement Agreement and Release, Exhibit A hereto, unless otherwise noted.

	Best Possible Trial Outcome	Current Settlement
	Waiver of 100% of outstanding Deficiency Balances in the amount of \$2,478,536.74.	Waiver of 100% of outstanding Deficiency Balances in the amount of \$2,478,536.74.
	Stop all collection activity on class member accounts, including all pending and prior Small Claims Actions.	Stop all collection activity on class member accounts, including all pending and prior Small Claims Actions.
	Instruct credit reporting companies to delete trade line.	Instruct credit reporting companies to delete trade line.
	Refund \$945,644.80 collected on class member Deficiency Balances.	Refund \$475,000.00 collected on class member Deficiency Balances.
	Mullen Finance to pay cost of Class Administrator.	Class Counsel to pay cost of Class Administrator, with reimbursement from the Residue.
	Attorneys' fees and costs paid by Mullen Finance separate and apart from class recovery.	Attorneys' fees and costs paid by Mullen Finance separate and apart from class recovery.

10. The settlement also acknowledges that the Class Representatives and the Settlement Class are entitled to an award of attorneys' fees and costs. Class Counsel played an important role, and was a material and significant factor in the process that ultimately resulted in the remedies to be provided to the Settlement Class Members. In consideration for settling this matter Class Counsel are entitled to an award based upon actual fees, costs, and expenses, not to exceed \$475,000.00, subject to Court approval, upon briefing, at the final fairness hearing. ¶5.08. Settlement Class Counsel shall seek reimbursement of up to \$75,000.00 in costs from the residue, subject to Court approval. This amount, which was negotiated separate from class remedies, will be paid separate from and in addition to the relief provided for class members.

¶5.05

11. The Agreement further provides for Settlement Class Notice to be provided directly to individual class members, by first class mail, using addresses updated through a national change of address search. ¶3.10. The Settlement Class Notice also tells Settlement Class Members how to exclude themselves from the settlement. Thus, the Agreement provides Settlement Class Members the relief sought in the Action and is structured to provide Settlement Class Members the best notice possible so that they can make an informed decision about whether to participate. Settlement Class Counsel will fund the Settlement Class Notice, but will request reimbursement of costs from the Residue of uncashed checks. ¶¶5.05, 5.07.

1 12. Attached to the Settlement Agreement as Exhibit B is a true and correct copy of the
2 proposed Settlement Class Notice. I participated in the drafting of the proposed Settlement Class
3 Notice.

4 13. In addition to relying on the representations of Mullen Finance for the numbers and
5 figures which form the basis for this settlement, we have required, in the express terms of the
6 Settlement Agreement itself, that Defendant, by and through counsel, must provide a declaration
7 indicating the method utilized to identify the Settlement Class, the total amount of Deficiency
8 Balances outstanding against the Settlement Class, and the amount of Deficiency Balances
9 collected. ¶3.09. Mullen Finance will also affirm that Accounts have been adjudged to reflect a
10 zero balance and that it has made requests to the credit reporting agencies as provided in Section
11 5.03(c) of the Settlement Agreement and Release. ¶5.11.

12 **IV. SUPERIORITY**

13 14. I firmly believe that a class action is the superior procedure for these types of cases, and
14 particularly this case, involving the failure of financial institutions to comply with the Rees-
15 Levering Automobile Sales Finance Act.

16 15. Consumers rarely understand their rights with regard to payment of a deficiency after
17 repossession of a vehicle. There are only a handful of attorneys in California that handle these
18 types of cases on a class action basis and are familiar with defense to payment of a deficiency,
19 based upon a financial institution's failure to strictly comply with the Rees-Levering Act.

20 16. A financial institution's failure to comply with the requirements of Rees-Levering causes
21 the same harm for all consumers. Defendant, as with other financial institutions, sends out a
22 substantively identical NOI to class members which all contain similar violations of the law as
23 set forth in paragraph 29 of the First Amended Complaint.

24 17. In my experience, recipients of NOI are very likely low-income consumers, many of
25 whom have poor credit and no legal education. Many of these consumers and the Settlement
26 Class Members have little, if any, access to attorneys, particularly attorneys familiar with the
27 nuances of the Rees-Levering Automobile Sales Finance Act.

28 18. Not only do consumers lack an understanding of their rights under the Rees-Levering

1 Automobile Sales Finance Act, the amounts that are claimed are relatively small amounts for
2 each individual and would prove to be uneconomical for attorneys to represent consumers on an
3 individual basis.

4 19. The outstanding alleged Deficiency Balances are amounts that Defendant will not collect
5 from class members under the terms of the Settlement Agreement and Release. Of the
6 \$945,644.80 that has been collected from class members, \$475,000.00 will be returned to the
7 class members who have paid any amount towards their Deficiency Balances.

8 20. It would be prohibitively costly for an individual to seek the services of an attorney and
9 bring a case on an individual basis. Although relieved of significant outstanding debt and having
10 the trade line removed from credit reports is substantial relief for class members, it is not the type
11 of case our office would handle on an individual basis.

12 21. For the above reasons, I believe that a class action is a superior method of resolving this
13 case. Without the class action procedures being used, none of these class members would have
14 the protection to which they are entitled under California law, except Plaintiffs.

15 V. INVESTIGATION AND DISCOVERY

16 22. Our firm has engaged in extensive investigation and formal discovery in this case as
17 shown below:

Request	Date of Request
Plaintiff's Request for Production of Documents (Set 1)	July 30, 2014
Plaintiff's Form Interrogatories (Set 1)	July 30, 2014
Plaintiff's Special Interrogatories (Set 1)	July 30, 2014
Plaintiff's Requests for Production of Documents (Set 2)	October 30, 2015
Plaintiff's Special Interrogatories (Set 2)	October 30, 2015
Plaintiff's Requests for Production of Documents (Set 3)	May 10, 2016
Plaintiff's Requests for Production of Documents (Set 4)	July 7, 2017
Plaintiff's Special Interrogatories (Set 3)	August 16, 2017
Plaintiff's Requests for Production of Documents (Set 4)	April 16, 2018
Plaintiff's Special Interrogatories (Set 4)	July 9, 2018

24 23. Defendant responded to Plaintiffs' discovery requests as follows:

Response	Date of Response
Mullen Finance's Response to Request for Production of Documents (Set 1) (objections)	September 30, 2014
Mullen Finance's Response to Form Interrogatories (Set 1) (objections)	September 30, 2014
Mullen Finance's Response to Special Interrogatories (Set 1) (objections)	September 30, 2014

1	Mullen Finance's Response to Request for Production of Documents (Set 1) (supplemental)	February 20, 2015
2	Mullen Finance's Response to Form Interrogatories (Set 1) (supplemental)	February 20, 2015
3	Mullen Finance's Response to Special Interrogatories (Set 1) (supplemental)	February 20, 2015
4	Mullen Finance's Document Production (Set 1)	March 24, 2015
	Mullen Finance's Response to Request for Production (Set 2)	February 1, 2016
5	Mullen Finance's Response to Special Interrogatories (Set 2)	February 1, 2016
	Mullen Finance's Document Production (Set 2)	August 30, 2016
6	Mullen Finance's Document Production (Set 3)	October 10, 2016
	Mullen Finance's Document Production (Set 4)	September 8, 2017
7	Mullen Finance's Document Production (Set 5)	October 12, 2017
	Mullen Finance's Response to Special Interrogatories (Set 3)	September 25, 2017
8	Mullen Finance's Response Special Interrogatories (Set 3) (Supplemental)	October 12, 2017
9	Mullen Finance's Response to Request for Production (Set 5)	May 18, 2018
	Mullen Finance's Document Production	July 2, 2018
10	Mullen Finance's Response to Special Interrogatories (Set 4)	August 14, 2018
	Mullen Finance's Document Production	October 2, 2018
11	Mullen Finance's Document Production Responsive to Special Interrogatories 37-44	December 3, 2018
12	Mullen Finance's Response to Special Interrogatories (Set 4) (Supplemental)	December 3, 2018
13		

14 24. Defendant served the following discovery requests on Plaintiffs:

	Request	Date of Request
15	Mullen Finance's Request for Production of Documents (Set 1)	March 5, 2015
16	Mullen Finance's Form Interrogatories (Set 1)	March 5, 2015
	Mullen Finance's Requests for Admission (Set 1)	March 11, 2015
17	Mullen Finance's Form Interrogatories (Set 2)	March 11, 2015
	Mullen Finance's Requests for Admission (Set 2)	August 25, 2017
18	Mullen Finance's Form Interrogatories (Set 2)	August 25, 2017
	Mullen Finance's Special Interrogatories (Set 1)	August 25, 2017
19	Mullen Finance's Requests for Admission (Set 3)	January 4, 2019
	Mullen Finance's Form Interrogatories (Set 3)	January 4, 2019
20	Mullen Finance's Special Interrogatories (Set 2)	January 4, 2019

21 25. Plaintiffs responded to Defendant's discovery requests as follows:

	Response	Date of Response
22		
23	Plaintiff's Response to Request for Production of Documents (Set 1)	September 2, 2015
	Plaintiff's Response to Request for Admission (Set 1)	September 2, 2015
24	Plaintiff's Response to Form Interrogatories (Sets 1 and 2)	September 2, 2015
	Plaintiff's Document Production	September 2, 2015
25	Plaintiff's Response to Form Interrogatories (Sets 1 and 2) (supplemental)	July 15, 2016
26	Plaintiff's Response to Request for Admission (Set 1) (supplemental)	July 15, 2016
27	Plaintiff's Response to Form Interrogatories (Set 3)	September 26, 2017
28	Plaintiff's Response to Request for Admission (Set 2)	September 26, 2017
	Plaintiff's Response to Special Interrogatories	September 26, 2017

1	Plaintiff's Response to Request for Admission (Set 3)	February 5, 2019
	Plaintiff's Response to Special Interrogatories (Set 2)	February 5, 2019
2	Plaintiff's Response to Request for Admission (Set 3)	February 5, 2019
3	Plaintiff's Response to Request for Production of Documents (Supplemental)	February 12, 2019
4	Plaintiff's Response to Special Interrogatories (Supplemental)	February 12, 2019

26. I took the following depositions of Mullen Finance employees:

	Deponent	Deposition Date
6	George Hurley	October 21, 2015
7	George Hurley	June 6, 2017
	Jerardo Martinez	June 6, 2017

27. Mullen Finance's Counsel took the deposition of Ricardo Melendez on January 14, 2016.

VI. NUMEROSITY AND TYPICALITY

28. Based upon verified formal discovery we have determined that there are approximately 1,206 class member accounts. ¶¶ 1.03, 5.01

29. Settlement Class Representatives are typical of the class members because they purchased a car in California, entered into a Conditional Sale Contract subject to the Rees-Levering Act, the Conditional Sale Contract was assigned to Mullen Finance, Mullen Finance repossessed the vehicle, Mullen Finance issued a NOI, Plaintiffs did not reinstate or redeem the contract, and Mullen Finance sold the vehicle and assessed a Deficiency Balances against them.

30. Settlement Class Representatives Ricardo Melendez, Andres Orozco, Martha Lomeli, and Carlos Cruz are therefore typical of other class members.

VII. ARM'S LENGTH NEGOTIATIONS

31. In negotiating the settlement of this case, the Parties mediated five separate times from 2015 until 2019. The mediations included September 9, 2015 and May 9, 2016 mediations with Judge John Kennedy (Ret.) of JAMS, an August 18, 2016 mediation with Judge Alexander Williams (Ret.) of ADR Services, and November 11, 2018 and February 7, 2019 mediations with Judge Thierry Colaw (Ret.) of Judicate West. The Parties were finally able to reach a settlement by each accepting Judge Colaw's mediator's proposal.

32. The Parties engaged in extensive negotiations of every aspect of the settlement. The Class Representatives were kept abreast of the negotiations throughout the process, and was provided with multiple drafts of the Settlement Agreement and Release.

1 **VIII. CLASS REPRESENTATIVES' CASE INVOLVEMENT AND SERVICE AWARD**

2 33. At the time that Plaintiffs were put in touch with our firm, they did not know their rights
3 under the Rees-Levering Act. Our firm was able to advise them of their rights.

4 34. Plaintiffs are of limited means, yet they made the effort to meet with our firm to discuss
5 their experience with Defendant. We extensively discussed the issues involved in the case and
6 the fact that the dollar amounts for each individual were so low that we would only be able to
7 handle the case on a class-wide basis.

8 35. I explained what a class action was to the Plaintiffs and they agreed to act as Class
9 Representatives believing that they wanted to help other consumers who were faced with a
10 similar situation.

11 36. Plaintiffs participated extensively in the case and although they did not attend the
12 mediation, they were available by phone.

13 37. Ricardo Melendez sat for his deposition in January 2016.

14 38. In addition to meeting with the Plaintiffs, our firm's associates, staff, and I have had
15 multiple phone conversations and correspondence with them over the course of the litigation in
16 order to inform them of progress, explain the case status, and answer any questions that had
17 arisen during the litigation.

18 39. In this case we are requesting a service award of \$5,000 for Ricardo Melendez, and
19 \$1,000 each for Andres Orozco, Martha Lomeli, and Carlos Cruz. The service award is in no
20 way conditional on having the Class Representatives sign the Settlement Agreement and release.
21 The service award is well within the range approved by courts.

22 40. Plaintiffs are pleased with the outcome and with the fact that they were able to assist
23 approximately 1,206 class members in receiving relief from Defendant in which Defendant has
24 agreed not to collect approximately \$2,478,536.74 in Deficiency Balances, will instruct the credit
25 reporting agencies to delete the trade lines, will cease further collection activity including all
26 pending and prior Small Claims Actions, and will refund \$475,000.00 to class members.

27 41. The following service awards have been awarded in similar cases:

28 //

Case	Service Award Amount	Date of Award
<i>Deluca v. Wescom Credit Union</i> Los Angeles County Superior Court Case No. BC472473	\$2,500.00	January 31, 2014
<i>Williams, Catherine v. Tidewater Finance Company</i> Los Angeles County Superior Court Case No. BC487314	\$2,000.00	November 26, 2013
<i>Grans v. Safe Credit Union</i> Contra Costa County Superior Court Case No. C11-02692	\$4,500.00	November 5, 2013
<i>Wimberly v. Triad Financial Corporation</i> Orange County Superior Court Case No. 30-2008 00059511	\$15,000.00	July 22, 2013
<i>Baker v GEMB Lending, Inc.</i> U.S. District Court Case No. C10-05261 (SBA)	\$10,000.00	December 28, 2012

IX. FAIRNESS

42. In my opinion, this settlement is fair and reasonable, providing substantial benefits to the class and achieving the purposes for which the case was brought. We have set forth the grounds for this opinion in the accompanying points and authorities, which is supported by my experience in similar matters, my review of the file, as well as my knowledge of the facts and circumstances of this case.

43. The settlement in this case provides substantial benefits to the Settlement Class members and results in the class receiving almost all of the relief to which the class would have been entitled had the case proceeded to trial.

44. On behalf of the class we are not giving up any significant penalties or other relief to which the class would be entitled at trial.

45. As the chart in Paragraph 9 indicates, the best possible outcome at trial is nearly identical to the current settlement terms.

46. At trial, the class could have *potentially* recovered 100% of the amount paid on Deficiency Balances. However, Mullen Finance threatened bankruptcy on many instances, or in the alternative lengthy appeals, should Plaintiffs prevail at trial. If Defendant had filed for bankruptcy, the Class would have not have recovered anything.

47. Based on this very real threat to the class, we determined that it would be best to reduce the amount of restitution from \$945,644.80 to \$475,000.00, including service awards to Class

1 Representatives. This means that each Settlement Class Member get restitution of roughly 50%
2 of the amount they paid. If Class Counsel had not made this concession, the Court could have
3 ruled against the Plaintiffs at trial, or, even if Plaintiffs prevailed, Mullen Finance could have
4 appealed the decision and/or filed for bankruptcy. Moreover, this recovery is achieved without a
5 claims process.

6 48. The recovery on behalf of the class is well within the range of appropriate settlement, and
7 takes into consideration the risk of trial, appeal, and bankruptcy.

8 49. Further, the payment of attorneys' fees does not come from the class fund, but is paid
9 separately and apart by Defendant.

10 **X. DISTRIBUTION OF THE RESIDUE**

11 50. It is intended and fully expected that the vast majority of the refunds due to class
12 members, \$467,000.00 plus \$8,000.00 in service awards, will be distributed and the checks
13 cashed. But, based upon my experience, I anticipate that between 20 – 25% of checks will not be
14 cashed. This amounts to approximately \$95,000.00 – \$118,750.00.

15 51. The Settlement Agreement and Release contemplates that Settlement Class Counsel may
16 request up to \$75,000.00 from the residue as reimbursement for costs and expenses associated
17 with prosecuting this case. ¶¶5.05, 5.07

18 52. If any funds remain uncashed after Distribution, and Distribution of costs to Class
19 Counsel, the remainder shall be used to make contributions to a non-profit organization that
20 satisfies the letter and intent of California Code of Civil Procedure §384. The Settlement
21 Agreement, ¶5.07, provides that the remainder be distributed to Public Law Center of Santa Ana
22 (“PLC”). I am personally aware of the work of PLC, a California based not-for-profit legal
23 services and advocacy organization. Per PLC’s website:

24 The Public Law Center is a 501(c)(3) nonprofit providing free legal services to
25 low income residents and other nonprofits in Orange County. Last year, Public
26 Law Center’ staff and volunteers provided over 65,000 hours of free legal
27 services in handling of over 4,500 cases benefitting low-income children, adults,
28 and seniors. The estimated value of this work is roughly \$60 million in just the
past three years. Our services include counseling, individual representation,
community education and strategic policy advocacy and impact litigation to
challenge societal injustices. . . .

1 We serve a wide range of clients, including immigrants, minorities, veterans,
2 seniors, children, and low-income residents of Orange County. The issues range
3 from domestic violence, human trafficking, guardianship, housing, health,
4 bankruptcy, asylum, family law, consumer fraud, immigration, discrimination,
5 and advocacy.

6 See <https://www.publiclawcenter.org/>.

7 53. PLC provides civil legal services to the indigent, in California, satisfying § 384(b).
8 Furthermore, due to its work with debt collection issues and consumer financial issues, PLC
9 benefits the Settlement Class and similarly situated persons and promotes the law consistent with
10 the objectives and purposes of the consumer financial protections of the Rees-Levering
11 Automobile Sales Finance Act, Civil Code § 2981 *et seq.*, the underlying cause of action in this
12 case. I am satisfied that PLC meets the requirements of Code of Civil Procedure § 384(b). Our
13 firm does not have interests or involvement in in the governance or work of PLC. Attached
14 hereto as **Exhibit C** is a set of documents that I obtained from that organization, in the exercise
15 of due diligence providing an explanation of their programs.

16 **XI. BACKGROUND IN SUPPORT OF OPINION**

17 **A. Kemnitzer Barron & Krieg**

18 54. Our law firm Kemnitzer, Barron & Krieg, LLP specializes in consumer litigation. Our
19 law practice is focused on representing consumers who have disputes with automobile
20 manufacturers, auto dealers and auto finance lenders. In addition to handling a large number of
21 these types of cases at the pre-trial and trial level, we have also done significant work in this area
22 in the California appellate courts. The reported cases in which lawyers from our firm have been
23 involved include the following:

- 24 1. *Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878. (Song-Beverly Act)
- 25 2. *Kwan v. Mercedes-Benz* (1994) 23 Cal.App.4th 174. (Song-Beverly Act)
- 26 3. *Jensen v. BMW of North America* (1995) 36 Cal.App.4th 112. (Song-Beverly Act)
- 27 4. *Music Acceptance v. Lofing* (1995) 32 Cal.App.4th 61. (Song-Beverly Act)
- 28 5. *Joseph v. J.J. MacIntyre* (2002) 238 F.Supp.2d 1158. (Fair Debt Collection)
6. *Gutierrez v. Autowest Dodge* (2003) 114 Cal.App.4th 77. (Consumer Arbitration)
7. *Joseph v. J.J. MacIntyre* (2003) 281 F.Supp.2d 1156. (Fair Debt Collection)
8. *Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553. (Private Attorney General Fees)
9. *Pintos v. Pacific Creditors Association* (2009) 565 F.3d 1106. (Fair Debt Collection)
10. *Medraza v. Honda of North America* (2008) 166 Cal.App.4th 89. (Vehicle Codes Issues)

- 11. *Arguelles v. Americredit Financial Services* (2010) 184 Cal.App.4th 825. (Consumer Arbitration)
- 12. *Medraza v. Honda of North Hollywood* (2012) Cal.App.4th 1. (Vehicle Codes Issues)
- 13. *Pierce v. Western Surety Company* (2012) 207 Cal.App.4th 83. (Dealer Surety Issues)
- 14. *Wohlgemuth v. Caterpillar Inc.*, (2012) 207 Cal. App. 4th 1252. (CCP Section 998)

Bryan Kemnitzer

55. I graduated from Stanford University with a B.A. in 1972, and from the University of the Pacific, McGeorge School of Law with a J.D. in 1975. I was admitted to the California Bar in 1975. I am rated “AV” in Martindale-Hubbell. I have been a civil litigator for more than thirty-five years. I have tried numerous jury cases to judgment and I have served as an arbitrator and judge pro tem. I have tried a class action to judgment, obtaining class-wide relief.

56. Throughout my career, I have been actively involved in a number of organizations seeking to promote the interests of consumers through public interest litigation. For several years, I was a member of the Board of Directors of the San Francisco Lawyer Referral Service Association. I was a member of the Board of Governors of the Consumer Attorneys of California (formerly California Trial Lawyers Association) for a number of years after 1999. I am a member of the National Association of Consumer Advocates, a non-profit corporation formed in response to the belief that an organization of private and public sector attorneys, legal services attorneys, law professors and students, whose primary practice or interests involve the protection and representation of consumers, was needed. Its mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its members as well as consumers in the ongoing struggle to curb unfair and abusive business practices.

57. I have lectured on various aspects of consumer rights litigation at numerous professional seminars, including the annual conferences for the National Consumer Law Center, regional conferences of the National Association of Consumer Advocates, the Consumer Attorneys of California, and the Practising Law Institute’s Consumer Financial Service Litigation Program. They have testified on these issues before various Sub-Committees of the California Assembly and

1 Senate, and at the Federal Trade Commission in Washington, D.C. and on FTC sponsored panels in
2 San Francisco.

3 **C. Nancy Barron**

4 58. Nancy Barron is a co-founding partner of our firm. Ms. Barron holds a B.A. cum laude
5 from Stanford University (1973). Ms. Barron was a Fulbright Scholar (1974-1975, Germany).
6 Ms. Barron obtained her J.D. from the University of California, Hastings College of Law (1981).
7 Ms. Barron served as an extern to the California State Supreme Court (1981).

8 59. Ms. Barron has been practicing litigation since 1981, nearly 40 years. From 1981 to 1984,
9 Ms. Barron was an associate at Miller, Starr & Regalia. Ms. Barron began practicing consumer
10 litigation with Bryan Kemnitzer in 1984. Ms. Barron is a founding partner in Kemnitzer, Barron
11 & Krieg, LLP, which we first formed in 1986 as Kemnitzer, Dickinson, Anderson & Barron, one
12 of the first plaintiffs' firms in California to specialize in consumer law.

13 60. Ms. Barron has trial experience, beginning in 1983. As co-lead counsel, Ms. Barron and I
14 have tried a class action to judgment. *Gutierrez v. Auto West* (San Francisco Superior Court Case
15 No. CGC-00-317755).

16 61. Ms. Barron has appellate experience, including several reported decisions in consumer
17 law cases. *See, e.g., Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878; *Kwan v. Mercedes*
18 *Benz* (1994) 23 Cal.App.4th 174 (argued); and *Gutierrez v. Auto West* (2004) 114 Cal.App.4th
19 77 (argued). Ms. Barron has also been lead and/or co-counsel in several unpublished decisions
20 and has served as a contributing author and editor on numerous amicus briefs.

21 62. **Publications:** Ms. Barron is the author of more than fifty (50) articles, many of which
22 discuss consumer issues, and a contributor to the manual, "Sales of Goods and Services," as well
23 as Consumer Law Pleadings with Disk, both published by NCLC, and widely used by both
24 defense and plaintiffs' counsel. Ms. Barron is also the author of the book, "Return to Sender:
25 Getting a Refund or Replacement for Your Lemon Car," (National Consumer Law Center,
26 Boston: 2000); which Ms. Barron is informed has sold out its second printing.

27 63. **Contribution to Legal Education:** Ms. Barron has been a speaker and panelist for
28 National Association of Consumer Advocates' regional conferences, Consumer Attorneys of

1 California statewide conferences, the National Consumer Law Center’s annual national
2 conferences (since 1994), and a State Bar approved provider of MCLE programs. Ms. Barron has
3 given intensive training to JAG officers. Ms. Barron has been a guest lecturer in Consumer Law
4 numerous times at the University of Santa Clara Law School and a judge of the Moot Court at
5 Stanford Law School.

6 64. **Advocacy:** In September 2009, Ms. Barron was invited to participate in a panel
7 discussion hosted by the Federal Trade Commission on debt collection practices. The outcome of
8 that discussion and debate (between the industry and consumer participants) is expected to
9 inform policy, the regulatory process and recommendations to Congress. Among the discussion
10 points was abuse in the repossession process. Ms. Barron’s comments are quoted in the resulting
11 publication, “Repairing a Broken System – Protecting Consumers in Debt Collection Litigation
12 and Arbitration,” (FTC, July 2010). Ms. Barron has testified before California state legislative
13 committees, advised staff on automotive consumer issues, and has assisted in drafting legislative
14 amendments to consumer protection laws. Ms. Barron has drafted comment to the Consumer
15 Financial Protection Bureau. Ms. Barron has contributed to *amicus curiae* briefs filed in
16 appellate courts, including the U.S. Supreme Court.

17 65. From 1998-2004, Ms. Barron served as an elected Director of the National Association of
18 Consumer Advocates (“NACA”), an organization comprised of approximately 1,000 attorneys
19 who represent consumers in nearly all fifty states (and as Co-Chair 2003-2004). For four years,
20 Ms. Barron was Editor-in-Chief of its publication, The Consumer Advocate, during which time
21 she arranged peer-review, edited and published well over one hundred articles on substantive
22 consumer law topics. Ms. Barron served on the NACA committee that revised the Class Action
23 Guidelines (see, 255 F.R.D. 215).

24 66. Since 2008, Ms. Barron has served on the 12-member Board of Directors of the National
25 Consumer Law Center in Boston (NCLC). While NCLC’s own mission is to defend the rights of
26 low-income consumers and to advance economic justice, it serves both plaintiffs’ and defense
27 attorneys in consumer law by publishing the standard manuals, which are used by all sides.

28 //

1 **D. Kristin Kemnitzer**

2 67. Kristin Kemnitzer is an associate at Kemnitzer, Barron & Krieg. She earned her B.A.
3 with honors from Stanford University in 2006. She graduated from University of California,
4 Berkeley, School of Law (Boalt Hall) in 2011. Ms. Kemnitzer passed the bar exam in November
5 2011 and was sworn in in December 2011.

6 68. From 2006 until 2008, Ms. Kemnitzer worked as a legal assistant at Google Inc. In 2009,
7 Ms. Kemnitzer served as a judicial extern for the Honorable Randall R. Rader, formerly Chief
8 Judge of the United State Court of Appeals for the Federal Circuit. During law school, she served
9 as Senior Articles Editor of the Berkeley Technology Law Journal. She also received a
10 Certificate of Law and Technology upon graduation.

11 69. From 2011 until 2012, Ms. Kemnitzer was a litigation associate at the law firm Wilson,
12 Sonsini, Goodrich & Rosati. Ms. Kemnitzer was also a summer associate at Wilson Sonsini in
13 2010. While at Wilson Sonsini, Ms. Kemnitzer focused on Internet and copyright litigation, and
14 class action defense. She also handled a variety of *pro bono* matters, including negotiating public
15 performance rights for non-profit organizations, and an application for asylum.

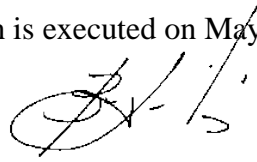
16 70. Ms. Kemnitzer began working at Kemnitzer, Barron & Krieg in October 2012. She is
17 responsible for drafting briefs and other pleadings, interviewing clients, managing cases,
18 handling discovery, conducting legal research and analysis, and appearing in court. Ms.
19 Kemnitzer has a full case load involving both individual cases and class actions.

20 71. Ms. Kemnitzer is involved in a number of consumer organizations, including the National
21 Consumer Law Center, the National Association of Consumer Advocates, Public Citizen, and
22 Public Justice. She has also been an MCLE lecturer on various topics, including providing a
23 legal negotiations training to staff attorneys at Bay Area Legal Aid. She has also appeared on
24 CBS News ConsumerWatch as a correspondent on consumer law issues. She has also been a
25 guest lecturer at University of California, Hastings College of Law. She has been a speaker at the
26 National Consumer Law Center annual Consumer Litigation Rights Conference in 2017 and
27 2018.

28 72. This information is submitted at this time to support my position that, based upon our

1 extensive experience, I believe this settlement to be fair and reasonable.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct, and this Declaration is executed on May 6, 2019, at San Francisco,
4 California.



5
6 BRYAN KEMNITZER

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 PROOF OF SERVICE

2 **Re: *Melendez v. Mullen Finance Plan, et al.***
3 **Orange County Superior Court Case No. 30-2014-00722412-CU-BT-CXC**

4 I, Sean R. Barry, certify that I am not a party to the proceeding herein, that I am and was
5 at the time of service over the age of 18 years old, and a resident of the State of California. My
6 business address is 354 Pine St., 5th Floor, San Francisco, CA 94104.

7 On May 7, 2019, I served the following:

8 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS**
9 **ACTION SETTLEMENT**

10 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR**
11 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

12 **DECLARATION OF CARLOS CRUZ IN SUPPORT OF MOTION FOR PRELIMINARY**
13 **APPROVAL OF CLASS ACTION SETTLEMENT**

14 **DECLARATION OF BRYAN KEMNITZER IN SUPPORT OF MOTION FOR**
15 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

16 **DECLARATION OF MARTHA LOMELI IN SUPPORT OF MOTION FOR**
17 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

18 **DECLARATION OF RICARDO MELENDEZ IN SUPPORT OF MOTION FOR**
19 **PRELIMINARY APPROVAL**

20 **DECLARATION OF ANDRES OROZCO IN SUPPORT OF MOTION FOR**
21 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

22 **APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF MOTION FOR**
23 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

24 **[PROPOSED] ORDER CERTIFYING CLASS SETTLEMENT, GRANTING**
25 **PRELIMINARY APPROVAL OF SETTLEMENT**


26 by depositing true copies thereof, enclosed in separate, sealed envelopes, each of which was
27 addressed respectively to the person(s) and address(es) shown below, for collection and
28 processing for mailing following this business' ordinary practice with which I am readily
familiar. On the same day correspondence is placed for collection and mailing, it is deposited in
the ordinary course of business with the United States Postal Service with the postage thereon
fully prepaid, in the United States mail at San Francisco, California.

//

1 **Michael J. Trotter**
2 **David P. Pruet**
3 **CARROLL, KELLY, TROTTER, FRANZEN, McBRIDE & PEABODY**
4 **111 West Ocean Blvd., 14th Floor**
5 **P.O. Box 22636**
6 **Long Beach, CA 90801**
7 **Attorneys for Defendant K STREET FINANCE, INC. dba MULLEN FINANCE PLAN**

8 I declare under penalty of perjury that the foregoing is true and correct.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Dated: May 7, 2019



Sean R. Barry

EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

Melendez v. K Street Finance, Inc. dba Mullen Finance Plan
Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC

This Settlement Agreement and Release (“Agreement”) is entered into by and between RICARDO MELENDEZ (“MELENDEZ”), ANDRES OROZCO (“OROZCO”), MARTHA LOMELI (“LOMELI”), and CARLOS CRUZ (“CRUZ”) (collectively “Plaintiffs”) individually and on behalf of the Settlement Class below, on the one hand, and K STREET FINANCE INC. dba MULLEN FINANCE PLAN (“MULLEN FINANCE” or “Defendant”), on the other hand.

I. RECITALS

1.01. RICARDO MELENDEZ ("Settlement Class Representative") filed a Class Action Complaint on May 5, 2014 against MULLEN FINANCE in Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC (the "Action"). Plaintiffs filed a First Amended Complaint (the operative complaint) on June 20, 2018 adding OROZCO, LOMELI, and CRUZ as class representatives. The First Amended Complaint asserts claims including, but not limited to, violations of the Rees-Levering Automobile Sales Financing Act, Civil Code §2981, *et seq.*, and violations of the Unfair Competition Law, Business and Professions Code §17200, *et seq.*

1.02. The Court granted class certification on February 3, 2017.

1.03. The Parties stipulate that there are 1,206 Settlement Class members.

1.04. Class Counsel has now fully analyzed and evaluated the merits of all Parties' contentions and this settlement as it impacts all Parties, including the individual members of the Settlement Class (as defined below), and after taking into account the substantial risks of continued litigation and the likelihood that the Action, if not settled now, will involve protracted and expensive trial and appeals, are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action is in the best interests of the Class Representative and the Settlement Class.

1.05. In consideration of the covenants and agreements set forth herein, the Settlement Class Representatives, the Settlement Class, and MULLEN FINANCE, themselves and through

their undersigned counsel, agree to the settlement of the Action, subject to Court approval, under the following terms and conditions.

II. DEFINED TERMS

As used in this Agreement, the following terms having the meanings set forth below:

2.01. "Action"

"Action" means and includes the First Amended Complaint and all other proceedings in Orange County Superior Court Case No. 30-2014-00722412-CU-BT-CXC.

2.02. "Agreement"

"Agreement" refers to this Settlement Agreement and Release.

2.03. "Class Counsel"

The phrase "Class Counsel" refers to Settlement Class Counsel Kemnitzer, Barron & Krieg, LLP.

2.04. "Class Representatives"

"Class Representatives" refer to RICARDO MELENDEZ, ANDRES OROZCO, MARTHA LOMELI, and CARLOS CRUZ.

2.05. "Conditional Sale Contract"

The phrase "Conditional Sale Contract" refers to any retail installment sales contract subject to the provisions of the Rees-Levering Automobile Sales Finance Act as set forth in California Civil Code §2981(a).

2.06. "Court"

"Court" refers to the Superior Court of the State of California in and for the County of Orange.

2.07. **"MULLEN FINANCE's Counsel"** refers to the law firm of Carroll, Kelly, Trotter, Franzen, McBride & Peabody.

2.08. "Deficiency Balance"

“Deficiency Balance” refers to the outstanding balance of a Settlement Class member’s Conditional Sale Contract account after sale of the collateral by MULLEN FINANCE, or its agents, including interest and principal and any other charges or fees assessed before or after the repossession.

2.09. **“Distribution Date”**

“Distribution Date” means fifteen (15) days after Final Judgment.

2.10. **“Final Approval”**

“Final Approval” of this Agreement means the Court issues orders finally approving this settlement including the judgment substantially in the form attached hereto as **Exhibit C**.

2.11. **“Final Judgment”**

“Final Judgment” means 61 days after Final Approval, or if an appeal is taken, when the judgment is final after all appeals are exhausted.

2.12. **“Motor Vehicle”**

“Motor Vehicle” is any motorized vehicle as defined by Civil Code §2981(k).

2.13. **“NOI”**

“NOI” means a written notice of intent to dispose of a repossessed or surrendered Motor Vehicle within the meaning of Civil Code §2983.2.

2.14. **“Parties”**

“Parties” means MULLEN FINANCE, MELENDEZ, OROZCO, LOMELI, CRUZ, and the Settlement Class.

2.15. **“Preliminary Approval”**

“Preliminary Approval” of this Agreement means the Court enters an order, substantially in the form attached hereto as **Exhibit A**, certifying a Settlement Class and preliminarily approving the terms and conditions of this Agreement, including the manner of providing notice to the Settlement Class.

2.16. **“Related Parties”**

“Related Parties” means (a) MULLEN FINANCE’s parent, affiliated and/or subsidiary companies, and any of their present and former officers, inside and outside directors, attorneys, accountants, agents, representatives, employees, heirs, successors and assigns, as well as each of their predecessors, successors, parents, subsidiaries, affiliates, and assigns, and (b) the past, present and future officers, directors, trustees, employees, shareholders, investors, owners, representatives, controlling persons, partners, associates, attorneys, accountants, service providers, agents, consultants, insurers, reinsurers and subrogees of each person or entity mentioned in clauses (a) or (b) of this section.

2.17. **“Settlement Class”**

“Settlement Class” means all persons:

- (a) who purchased a motor vehicle and, as part of that transaction, entered into an agreement subject to California’s Rees-Levering Automobile Sales Finance Act, Civil Code §2981, *et seq.*;
- (b) whose motor vehicle was repossessed or voluntarily surrendered;
- (c) who were issued a Notice of Intent to Dispose of Motor Vehicle (“NOI”) by Mullen Finance from May 5, 2010 through August 4, 2016 that gave the consumer the right to reinstate the loan; and
- (d) against whose account a deficiency balance was assessed.

Excluded from the Class are persons (1) whose account were discharged in bankruptcy, (2) against whom Mullen Finance obtained a judgment in Superior Court, and (3) those consumers who appear on the Stipulation of Parties to Exclude Certain Class Members, filed on January 9, 2019.

2.18. **“Settlement Class Administrator”**

“Settlement Class Administrator” refers to Kurtzman Carson Consultants LLC.

2.19. **“Settlement Class Notice”**

“Settlement Class Notice” refers to the notice to be sent to Settlement Class members by the Settlement Class Administrator substantially in the form attached hereto as **Exhibit B**.

2.20. **“Small Claims Actions”**

“Small Claims Actions” refers to all cases MULLEN FINANCE has filed against any Settlement Class Member with regards to collecting any amounts following the repossession and sale of Settlement Class Members’ Motor Vehicles and includes both cases in which a judgment was obtained, and pending cases.

As used herein, the plural of any of the above defined terms includes the singular thereof and the singular of any defined term includes the plural thereof.

III. Preliminary Approval

3.01. **Settlement Class Certification.** For the purposes of settlement and the proceedings contemplated herein, the Parties stipulate and agree that the Settlement Class consists of 1,206 Settlement Class Members and that Plaintiff’s counsel shall be appointed as Settlement Class Counsel.

3.02. **Preliminary Approval.** Promptly upon execution of this Agreement, the Settlement Class Representatives, through Class Counsel, shall file a motion for Preliminary Approval. The motion shall request an order:

- (a) granting Preliminary Approval of this settlement substantially in the form attached as **Exhibit A**;
- (b) Certifying the Settlement Class;
- (c) appointing MELENDEZ, OROZCO, LOMELI and CRUZ as Settlement Class Representatives;
- (d) appointing Kemnitzer, Barron & Krieg, LLP as Settlement Class Counsel;
- (e) approving a Settlement Class Notice substantially in the form attached hereto as **Exhibit B** to be mailed to the Settlement Class members;
- (f) approving the retention of the Settlement Class Administrator and class settlement procedures; and
- (g) prohibiting MULLEN FINANCE from collecting a Deficiency Balance from any Settlement Class member.

3.03 **Cessation of Collection.** Upon execution of this Agreement, MULLEN FINANCE shall cease all attempts to collect Deficiency Balances from Settlement Class members, including accomplishing the following: recall the accounts of Settlement Class members from any internal collection departments; recall and/or repurchase the account of any Settlement Class members that were assigned to any outside collection agencies; recall any accounts of Settlement Class members that have been assigned to legal counsel; and dismiss any pending legal action against any Settlement Class member, including but not limited to filing an acknowledgement of satisfaction of judgment in every Small Claims Action against any Settlement Class Member.

3.04. **Appointment of Class Representatives.** Class Counsel shall ask the Court to appoint MELENDEZ, OROZCO, LOMELI and CRUZ as the Settlement Class Representatives for the Settlement Class. MULLEN FINANCE shall not oppose such request.

3.05. **Retention of Settlement Class Administrator.** The Class Representatives, through Class Counsel shall engage Kurtzman Carson Consultants LLC as the Settlement Class Administrator. The fees, costs and expenses of the Settlement Class Administrator shall be subject to reimbursement from the residue (as set forth in ¶5.07). On or before May 9, 2019, MULLEN FINANCE shall provide to the Settlement Class Administrator and Settlement Class Counsel the Settlement Class member information in electronic form, pursuant to ¶¶3.06 and 3.07 below.

3.06. **Obligations of Settlement Class Administrator.** The Settlement Class Administrator shall be responsible for all of the following:

- (i) preparing, printing, and disseminating the Settlement Class Notice to the Settlement Class and establishing a toll-free phone number for inquiries arising out of such notice;
- (ii) establish and maintain a case specific website incorporating important court documents, dates, frequently asked questions, forms, and other pertinent case information;

- (iii) promptly furnishing to the Parties' counsel copies of any requests for objections, or other written or electronic communications from or on behalf of members of the Settlement Class;
- (iv) determining eligibility and the amount to be refunded to eligible Settlement Class members in accordance with this Agreement;
- (v) keeping track of objections to the settlement, including maintaining the original mailing envelope in which they were mailed, and within five (5) business days after the close of the opt-out or objection period, informing the Parties' counsel in writing of the total number of such requests received in response to the Settlement Class Notice;
- (vi) preparing and mailing settlement checks in accordance with this Agreement;
- (vii) ascertaining updated address and addressee information for each Settlement Class member whose Settlement Class Notice is returned as undeliverable and re-mailing such notice in the manner and under the circumstances described herein;
- (viii) performing any tax reporting duties required by federal, state, or local law;
- (ix) informing the Parties regularly of its activities, including the dates of each mailing of Settlement Class Notices, returned mail, and other communications and attempted written or electronic communications with Settlement Class members;
- (x) confirming in writing its completion of the administration of the settlement;
- (xi) preparing a declaration summarizing the number of objections, identifying the objectors, and delivering such declaration to the Parties' counsel prior to the date for filing the motion for Final Approval;

- (xii) participation in the resolution of disputes during the claims administration process in the manner provided below; and
- (xiii) such other tasks as the Parties' counsel mutually agree.

3.07. **Identification of the Settlement Class.** MULLEN FINANCE shall identify from their records the Settlement Class members' address, payment, and Deficiency Balance information and provide such Settlement Class member information to the Settlement Class Administrator and Settlement Class Counsel on or before May 9, 2019.

3.08. **Resolution of Disputes.** Any disputes regarding payments to the Settlement Class – such as a dispute about a payment amount or the proper recipient of a payment – will be resolved in the following manner. Settlement Class Counsel and MULLEN FINANCE's Counsel will first meet and confer in a good faith attempt to resolve that dispute. In the event the dispute cannot be resolved informally between the Parties' counsel, the Settlement Class Administrator will resolve the dispute and such resolution shall be final and binding on the Settlement Class member. In resolving such disputes, MULLEN FINANCE's records shall be presumed to be accurate and correct, and shall be final and binding, unless information provided by the Settlement Class member proves otherwise. Any such disputes shall be resolved and all checks must be negotiated within ninety (90) days of the Distribution Date.

3.09. **Mullen Finance Declaration.** Simultaneously with providing the Settlement Class information to the Settlement Class Administrator pursuant to ¶ 3.07 above, MULLEN FINANCE will provide a declaration to Settlement Class Counsel stating:

- (a) the method utilized by MULLEN FINANCE to identify the Settlement Class;
- (b) the total amount of deficiencies assessed against the Settlement Class;
- (c) the amount of all payments made by Settlement Class members towards the Deficiency Balances on their accounts following disposition of the Motor Vehicles; and

- (d) that sufficient means exist to identify Settlement Class Members in order to implement the terms of this Agreement.

3.10. **Settlement Class Notice.** Attached as **Exhibit B** to this Agreement is the notice to be sent to Settlement Class members by the Settlement Class Administrator. Within fourteen (14) days after Preliminary Approval, the Settlement Class Administrator shall send the Settlement Class Notice by first-class mail to all Settlement Class members. Before mailing the Settlement Class Notice, the Settlement Class Administrator shall update the addresses contained in the Settlement Class information provided by MULLEN FINANCE. If any Settlement Class Notices are returned by the Postal Service, they will be re-mailed if additional address information is provided by the Postal Service.

3.11. **Exclusion.** Any Settlement Class member (other than the Class Representative) may elect to be excluded from the Settlement Class by submitting in writing a request for exclusion to the Class Administrator. Such request must be postmarked no later than forty-five (45) days after the date the Settlement Class Notice is mailed to the Settlement Class. To be effective, any request for exclusion must contain: the name of the case; the name, address, dated signature, and telephone number of the Settlement Class member; a written statement that the Settlement Class member wishes to be excluded from this settlement; and the last four digits of the Settlement Class member's MULLEN FINANCE Account number. Any Settlement Class member who timely and properly requests exclusion in compliance with these requirements will not have any rights under this settlement, will not be entitled to receive Cash Relief, and will not be bound by this Settlement Agreement or the Final Approval Order.

3.12. **Objection.** Any Settlement Class member (other than the Settlement Class Representatives, who approve of and entered into this Agreement) may object to this Agreement by submitting in writing his or her objection to the Settlement Class Administrator. Such objection must be postmarked no later than forty-five (45) days after the date the Settlement Class Notice is mailed to the Settlement Class. Any objection must contain: the name, address, dated signature, and telephone number of the Settlement Class member; a clear statement of each

objection; a clear statement of all supporting evidence; and a copy of any briefing to be considered in support of the objection. The Parties recognize that the Court, in its discretion, may hear objectors at the time of the Final Approval hearing, whether or not a written objection was submitted.

IV. Final Approval

4.01. **Motion for Final Approval.** Settlement Class Counsel and MULLEN FINANCE's Counsel shall request a date for the Final Approval hearing at the time of the hearing for Preliminary Approval. At least sixteen (16) Court days prior to the Final Approval hearing, Settlement Class Counsel shall file a motion for Final Approval of the settlement, for an award of attorneys' fees and costs pursuant to ¶ 5.08 below (10 days prior to the expiration of the deadline for Settlement Class members to object), for a service award to the Settlement Class Representatives pursuant to ¶ 5.06 below, for distribution of up to \$75,000 to Class Counsel for costs and for nomination of Public Law Center in Santa Ana as *cy pres* recipient of the remaining residue pursuant to ¶ 5.07. The motion will request the Court to grant final approval of the settlement, including approving this Agreement as fair, reasonable, adequate, and binding on the Settlement Class, award attorneys' fees and costs to be paid to Settlement Class Counsel, approve a plan for distribution of residual funds, if any, and entering the Final Order and Judgment substantially in the form attached hereto as **Exhibit C**.

4.02. **Termination of Agreement.** In the event this Agreement terminates pursuant to its terms or for any reason, the Order Certifying Settlement Class shall be vacated, and this Action shall revert to its status with respect to class certification (and otherwise) as existed prior to the execution of this Agreement. Furthermore, any evidence and statements made relating to this Agreement—other than evidence obtained through ordinary discovery procedures or from third party sources by the Parties—offered in support of the settlement shall be deemed privileged and confidential pursuant to Evidence Code §1152.

V. Relief to Settlement Class Members

5.01. After diligent investigation of their records, the Parties stipulate that there are 1,206 members of the Settlement Class. According to MULLEN FINANCE'S records, Settlement Class members have a total outstanding deficiency balance of approximately \$2,478,536.74, including a total outstanding Deficiency Balance on Small Claims Actions of approximately \$1,631,183.62. The total Deficiency Balance collected is approximately \$945,644.80, and the total collected from Small Claims Actions is approximately \$758,115.26. The total collected from Settlement Class members other than from Small Claims Actions is approximately \$187,529.54. Within fourteen (14) days after the execution of this agreement, MULLEN FINANCE will certify the accuracy of, or update, these figures, and send such Settlement Class information to both the Class Administrator and Settlement Class Counsel, pursuant to ¶¶ 3.05 – 3.07.

5.02. Monetary Relief to Settlement Class Members.

(a) Ten (10) business days after Final Approval, MULLEN FINANCE agrees to electronically transfer to an account held by the Settlement Class Administrator the full amount of settlement funds necessary to pay the Settlement Class Members the monetary relief pursuant to the terms of this Agreement.

(b) On the Distribution Date, the Settlement Class Administrator shall mail checks to eligible Settlement Class members who paid any amount on their Deficiency Balances, pursuant to subsection (c) below.

(c) The amount refunded shall consist of \$475,000.00, including the Service Awards addressed in ¶ 5.06. Thus, the amount to be refunded to the Settlement Class members is thus \$467,000.00. From this amount, distribution to Settlement Class Members shall be made on a pro-rata basis, calculated by the total amount the Settlement Class Member paid to MULLEN FINANCE following the sale of the Motor Vehicle and MULLEN FINANCE's assessment of a Deficiency Balance, including such payments made pursuant to small claims court judgments. Any Settlement Class members who do not cash their checks within ninety (90) days after issuance shall no longer be eligible to receive monetary relief but shall be entitled to the other

relief provided for in this Agreement, and shall be bound by the Agreement and Final Order and Judgment entered in the Action.

(d) If there are co-borrowers on an account, the monetary relief pursuant to the preceding section shall be paid by check made payable to the first named borrower. In the event of any dispute about a refund or the proper recipient of a refund, whether caused by the death of a co-borrower, a dispute between co-borrowers, or for any other reason, Settlement Class Counsel and MULLEN FINANCE's Counsel shall meet and confer in a good faith attempt to resolve that dispute. In the event the dispute cannot be resolved informally between the Parties, the Settlement Class Administrator shall resolve the dispute after consultation with the Parties' counsel.

5.03. **Additional Relief To Settlement Class Members.** MULLEN FINANCE shall provide the following relief to Settlement Class members on or before the Distribution Date:

(a) MULLEN FINANCE shall identify the accounts for Settlement Class members where a Deficiency Balance was assessed, and shall change those account records to reflect a zero balance for each such account.

(b) To the extent they have not already done so, MULLEN FINANCE shall take all steps necessary to cease all efforts to collect the Deficiency Balances of Settlement Class members. This includes, but is not limited to, recalling all Settlement Class member accounts from outside agencies, recalling all such accounts that have been assigned to legal counsel, and dismiss any pending legal action against any Settlement Class member, including but not limited to filing an acknowledgement of satisfaction of judgment in every Small Claims Action filed at any time against any Settlement Class Member.

(c) MULLEN FINANCE shall instruct the Credit Reporting Agencies to which it has reported to delete the trade lines for all Settlement Class members' Accounts. Settlement Class members and Class Counsel acknowledge that it may take up to sixty (60) days for the Credit Reporting Agencies to update the credit histories, that MULLEN FINANCE does not control the Credit Reporting Agencies, and that MULLEN FINANCE can only request, but

cannot guarantee, that its trade line(s) will be deleted as requested. If at any time following the transmission of such requests, any Settlement Class member determines that any Credit Reporting Agency has not complied with MULLEN FINANCE's request as set forth in this paragraph, the Settlement Class member may notify Class Counsel. Upon being provided a copy of the relevant portion of any credit report which the Settlement Class member contends was not updated, MULLEN FINANCE will, within thirty (30) business days following its receipt of such notice and credit reports, re-contact any Credit Reporting Agency that has not updated the Settlement Class member's credit report and again request that its reporting be updated to delete the trade line. The Class Representative, Settlement Class members, and MULLEN FINANCE agree that MULLEN FINANCE shall have no liability for any Credit Reporting Agency's failure to act.

5.04. **1099s.** For purposes of this Agreement only, MULLEN FINANCE admits that the NOIs sent to Settlement Class members did not comply with the requirement of Civil Code §2983.2 as interpreted by the California Court of Appeal in *Juarez v. Arcadia Fin., Ltd.*, 152 Cal. App. 4th 889 (2007), and that the collection of Deficiency Balances is barred by operation of state law. Consequently, no "identifiable event" has occurred within the meaning of Treasury Regulations 1.605P-1(b)(2) as a result of this Agreement. Therefore MULLEN FINANCE will not issue an IRS Form 1099 to any Settlement Class member at this time in connection with the discharge of Deficiency Balances or any refund of payments made on a Deficiency Balance as set forth herein. Notwithstanding the foregoing, MULLEN FINANCE may issue Form 1099s to such Settlement Class members in the future if so ordered by the IRS, and such compliance by MULLEN FINANCE shall not be a breach of this Agreement.

5.05. **Fees and Costs of Class Administrator.** Class Counsel shall pay all fees, costs, and expenses concerning the Settlement Class Notice to the Settlement Class, and costs related to providing relief to the Settlement Class, subject to the approval of the Court at the time of the final approval hearing, the residue of any uncashed checks distributed pursuant to the terms of

this Agreement shall be paid to Class Counsel as reimbursement for costs and expenses up to \$75,000.00, as set forth in ¶ 5.07.

5.06. **Service Award.** On or before the Distribution Date, and subject to approval by the Court, MULLEN FINANCE shall pay MELENDEZ a service award of \$5,000, and OROZCO, LOMELI, and CRUZ each \$1,000 for their service to the Settlement Class. The service awards shall be paid from the Settlement Funds specified in ¶ 5.02(c) prior to any other payments. The pro-rata payments to the Class Members, provided in ¶ 5.02(c), shall be made after payment of the service awards. Each of the Class Representatives shall receive the service award in addition to the pro-rata payments to them as Settlement Class members.

5.07. **Distribution of Residue.** Subject to the approval of the Court at the time of the final approval hearing, the residue of any uncashed checks distributed pursuant to the terms of this Agreement shall be paid first to Class Counsel as reimbursement for costs and expenses, including costs of administration, up to \$75,000.00. Thereafter, any remaining funds shall be paid as *Cy Pres* to the Public Law Center in Santa Ana, a non-profit organization that meet the criteria set forth in California Code of Civil Procedure §384. One Hundred Twenty (120) days after the Distribution Date, the Settlement Class Administrator shall notify the Parties' counsel in writing of: the number of Settlement Class members sent checks, the total dollar amount of the checks, and the total dollar amount of such un-cashed checks.

5.08. **Settlement Class Counsel's Attorneys' Fees And Costs.**

(a) MULLEN FINANCE agrees that the Class Representatives and the Settlement Class are prevailing parties for purposes of an award of fees and costs. Subject to approval by the court, MULLEN FINANCE agrees to pay Class Counsel the sum of \$475,000.00 in attorneys' fees and costs (plus an amount up to \$75,000 from the residue after distribution as set forth in ¶ 5.07). Class Counsel agrees that they shall not be entitled to and will not seek attorneys' fees and costs or expenses in the Action which exceeds this amount. In the event that Class Counsel seeks a fee and cost award that does not exceed the amount stated herein, MULLEN FINANCE agrees not to negatively comment, oppose, or appeal Class Counsel's

application for fees and costs. Class Counsel agree that such an award shall compensate them for all legal work in the Action up to and including the date of the Final Judgment, as well in connection with the distribution and compliance proceedings as ordered by the Court.

(b) MULLEN FINANCE agrees that the attorneys' fees and costs shall be made in four (4) annual payments to Settlement Class Counsel in the amount of \$118,750.00. The first installment of \$118,750.00 shall be made on the Distribution Date. The remaining three payments shall be made on or before January 5th of the subsequent year. I.e. if the Distribution Date is in 2019, the second payment shall be due on or before January 5, 2020, the third payment shall be due on or before January 5, 2021, and the fourth and final payment shall be due on or before January 5, 2022.

(c) MULLEN FINANCE acknowledges that failure to make a payment on or before the scheduled payment date payment will cause Settlement Class Counsel to incur costs and other damages not otherwise provided for in this Agreement, the exact amount of which would be very difficult to determine. Therefore, if any scheduled payment is not received within five business days of the scheduled due date a late charge equal to 7% of the amount past due shall be immediately due and payable. Acceptance of any late payment or late charge will not constitute a waiver of the default with respect to the overdue amount and shall not prevent Settlement Class Counsel from exercising any of Settlement Class Counsel's other rights and remedies under this Agreement. Without limiting the foregoing, any scheduled payment not made on or before the scheduled payment date shall bear simple interest at the rate of 10% per annum beginning on the scheduled payment date and through and including the date of payment. If any scheduled payment is not made on or before 30 calendar days after the scheduled payment date, Settlement Class Counsel may declare the entire unpaid balance under this Agreement immediately due and payable. MULLEN FINANCE acknowledges and agrees that the late charge and interest on past-due amounts, as set forth in this paragraph, represent fair and reasonable estimates of the costs that Settlement Class Counsel will incur by reason of the late payment.

(d) George Hurley, as President and CEO of MULLEN FINANCE, in consideration of the execution of this Settlement Agreement, hereby personally guarantees the terms of this Settlement Agreement, including reasonable attorneys' fees and legal expenses incurred herein for the enforcement of the terms of the Settlement Agreement. George Hurley hereby unconditionally and personally guarantees and promises to pay or perform on demand any and all debts, obligations and liabilities of MULLEN FINANCE under or arising out of this Settlement Agreement and shall execute the personal guarantee attached hereto as Exhibit D incorporated herein.

5.09 Satisfaction by Judgment of all Class Claims/Release of Claims. All Settlement Class members who do not request exclusion as set forth herein shall and hereby do release any and all claims, liens, demands, causes of action, obligations, damages, and liabilities, that they have or may have against MULLEN FINANCE's present and former parents, subsidiaries, officers, directors, attorneys, accountants, agents, representatives, employees, heirs, insurance carriers, predecessors, affiliates, agents, or successors in interest, arising out of any claims based on the facts asserted in the Action; including, without limitation, any claims arising out of MULLEN FINANCE's sending of post-repossession NOIs, the content of such NOIs, the assertion of a Deficiency Balance following repossession, the collection or attempted collection of Deficiency Balances following repossession, and reporting to credit bureaus of the amounts remaining on the Account after repossession.

5.10 Release by Class Representative. The Class Representative hereby releases any and all claims, demands, or causes of action of any nature which he has, had, or may have against MULLEN FINANCE and any of its present and former officers, directors, attorneys, accountants, agents, representatives, employees, heirs, insurance carriers, predecessors, affiliates, agents, or successors in interest, arising out of any facts asserted on her behalf in the Action, including, without limitation, any claims arising out of MULLEN FINANCE's repossession of the collateral and/or vehicle, sending of post-repossession NOIs, the content of such NOIs, the assertion of a deficiency balance following repossession, the collection or attempted collection of

deficiency balances following repossession, and reporting to credit bureaus of the amounts remaining on the account after repossession. The Class Representative expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity. The Parties to this Agreement explicitly took that possibility into account in entering into this Agreement. A portion of the consideration has been bargained for between the Parties to this Agreement with the knowledge of the possibility of such unknown losses or claims and was given in exchange for a full accord, satisfaction, and discharge of all such losses or claims. Consequently, the Class Representative for himself, expressly waives all rights under California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Except, however, this release does not apply to claims (i) exclusively based on conduct by parties other than MULLEN FINANCE; and (ii) exclusively based on conduct that is not traceable or otherwise attributable to MULLEN FINANCE.

5.11 **Compliance Declaration.** After Final Judgment, MULLEN FINANCE shall file and serve on Class Counsel a declaration under penalty of perjury pursuant to the laws of the State of California establishing that MULLEN FINANCE has complied with all of the terms of the Settlement Agreement, expressly declaring without limitation as follows:

- (1) MULLEN FINANCE has deposited with the Settlement Class Administrator sufficient funds to provide the monetary relief Class Members set forth herein;
- (2) MULLEN FINANCE has provided to the Settlement Class Administrator sufficient information to issue checks to those Class Members entitled to monetary relief, and to satisfy all other monetary obligations required to implement the terms of this agreement;

- (3) the Deficiency Balances of Class Members have been waived and account balances reduced to zero;
- (4) MULLEN FINANCE ceased all attempts to collect Deficiency Balances from Class Members;
- (5) MULLEN FINANCE has dismissed all pending Small Claims Actions and has filed acknowledgment of satisfaction of judgments for Small Claims Actions that are already concluded; and
- (6) MULLEN FINANCE has requested the credit reporting agencies to delete the trade lines relating to Settlement Class Members' accounts.

5.12 **Court Retains Jurisdiction After Entry of Final Judgment.** Without affecting the finality of the Final Judgment in any way, the Court shall retain jurisdiction pursuant to Code of Civil Procedure § 664.6, over:

- (a) any other action necessary to implement the terms of the Final Approval Order and/or this Agreement, including any further amendments to the Final Approval Order to provide relief to additional members of the Settlement Class who may be identified after Final Judgment;
- (b) the construction, interpretation, implementation, and enforcement of the Final Approval Order, until each and every act agreed to be performed by the parties thereunder has in fact been fully performed.

VI. MISCELLANEOUS PROVISIONS

6.01 **Termination Of Discovery And Motion Practice.** By signing this Agreement, the Parties agree promptly to withdraw all discovery pending in the Action and not to serve any discovery after the date of this Agreement, unless ordered by the Court or Final Approval is not granted and this Agreement becomes void.

6.02 **Acceptance of Terms/Execution of Agreement.** If the Parties enter into this Agreement, they must do so by accepting all of the terms of this Agreement. The Parties may not

accept some terms and reject others. Moreover, the Parties must personally sign the Agreement, on advice of counsel, for it to be valid and effective.

6.03 Court Retains Jurisdiction After Entry of Final Judgment. Without affecting the finality of the Final Order and Judgment in any way, the Court shall retain jurisdiction over the construction, interpretation, implementation, and enforcement of the Final Order and Judgment, until each and every act agreed to be performed by the Parties thereunder has in fact been fully performed.

6.05 Each Party Is Represented by Counsel. The Parties acknowledge to each other that each is represented by legal counsel of their own choice throughout all of the negotiations that preceded the execution of this Agreement and that they have executed this Agreement after being so advised by counsel and without reliance upon any promise or representation of any person acting for or on behalf of the other. The Parties further acknowledge that they and their counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution of this Agreement. Each Party has read and approved the language of this Agreement, having been advised by counsel.

6.06 Entire Agreement/Construction And Interpretation. This Agreement embodies the entire agreement and understanding between the Parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof. No course of prior dealing between the Parties and no extrinsic evidence of any nature shall be used to supplement, explain, or modify any term used herein. The Parties represent and warrant to the other party that they are not relying on any other party for advice. This Agreement is a product of negotiation and preparation by and among each Party and their attorneys. Therefore, each Party expressly waives the provisions of Civil Code §1654 and acknowledges and agrees that this Agreement should not be deemed prepared or drafted by one party or the other, and shall be construed accordingly.

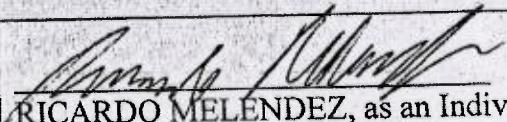
6.07 **Counterpart Originals.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement.

6.08 **Modification Only In Writing.** Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

6.09 **Enforcement of Agreement.** The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to his, her, or its reasonable attorneys' fees and costs; provided, however, that as a prerequisite for any such action or proceeding, the party claiming breach shall first meet and confer with the other party in an effort to resolve the controversy. The meet and confer process shall, at a minimum, include an exchange of letters between the Parties. No action or proceeding shall be initiated with the Court until fifteen (15) days after the initial letter is sent from one party to the other.

6.10 **Governing Law.** This Agreement shall be governed and interpreted under California law.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

DATED: <u>April 13th</u> , 2019	 RICARDO MELENDEZ, as an Individual and as a Representative Class Plaintiff
--------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

DATED: _____, 2019	_____ ANDRES OROZCO, as an Individual and as a Representative Class Plaintiff
--------------------	-------------------------------------------------------------------------------------

6.07 **Counterpart Originals.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement.

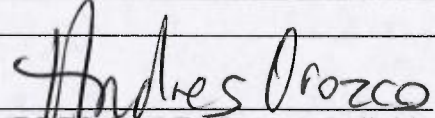
6.08 **Modification Only In Writing.** Neither this Agreement nor any provision hereof may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

6.09 **Enforcement of Agreement.** The prevailing party in any action or proceeding to enforce the terms of this Agreement shall be entitled to his, her, or its reasonable attorneys' fees and costs; provided, however, that as a prerequisite for any such action or proceeding, the party claiming breach shall first meet and confer with the other party in an effort to resolve the controversy. The meet and confer process shall, at a minimum, include an exchange of letters between the Parties. No action or proceeding shall be initiated with the Court until fifteen (15) days after the initial letter is sent from one party to the other.

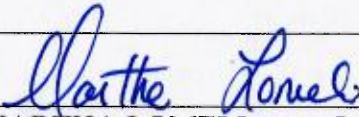
6.10 **Governing Law.** This Agreement shall be governed and interpreted under California law.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

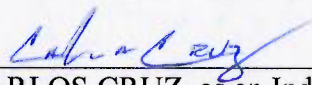
DATED: _____, 2019	_____ RICARDO MELENDEZ, as an Individual and as a Representative Class Plaintiff
--------------------	----------------------------------------------------------------------------------------

DATED: April 15, 2019	 ANDRES OROZCO, as an Individual and as a Representative Class Plaintiff
-----------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

DATED: 4.15., 2019


MARTHA LOMELI, as an Individual and as a Representative Class Plaintiff

DATED: 4/15, 2019


CARLOS CRUZ, as an Individual and as a Representative Class Plaintiff

DATED: _____, 2019

K STREET FINANCE INC. dba MULLEN FINANCE PLAN

By: _____
Title: _____

DATED: _____, 2019

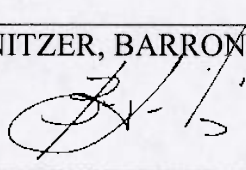
GEORGE HURLEY

By: _____
Title: _____

Approved as to Form:

DATED: April 15, 2019

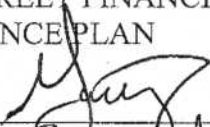
KEMNITZER, BARRON, & KRIEG, LLP

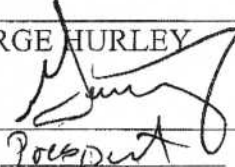
By: 
BRYAN KEMNITZER
KRISTIN KEMNITZER

Attorneys for RICARDO MELENDEZ, ANDRES OROZCO, MARTHA LOMELI, CARLOS CRUZ, and the Proposed Settlement Class

DATED: _____, 2019	MARTHA LOMELI, as an Individual and as a Representative Class Plaintiff
--------------------	-------------------------------------------------------------------------

DATED: _____, 2019	CARLOS CRUZ, as an Individual and as a Representative Class Plaintiff
--------------------	-----------------------------------------------------------------------

DATED: _____, 2019	K STREET FINANCE INC. dba MULLEN FINANCE PLAN By:  Title: <u>President</u>
--------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

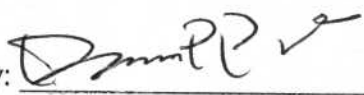
DATED: _____, 2019	GEORGE HURLEY By:  Title: <u>President</u>
--------------------	-------------------------------------------------------------------------------------------------------------------------------------

Approved as to Form:

DATED: _____, 2019	KEMNITZER, BARRON, & KRIEG, LLP By: _____ BRYAN KEMNITZER KRISTIN KEMNITZER Attorneys for RICARDO MELENDEZ, ANDRES OROZCO, MARTHA LOMELI, CARLOS CRUZ, and the Proposed Settlement Class
--------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DATED: May 3, 2019

CARROLL, KELLY, TROTTER, FRANZEN,
McKENNA & PEABODY

By: 

MICHAEL TROTTER
DAVID PRUETT

Attorney for Defendant MULLEN FINANCE

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

RICARDO MELENDEZ; ANDRES OROZCO; MARTHA LOMELI; and CARLOS CRUZ,

Plaintiffs

vs.

K STREET FINANCE, INC. dba MULLEN FINANCE PLAN; and DOES 1 through 50, inclusive,

Defendants

Case No. 30-2014-00722412-CU-BT-CXC

CLASS ACTION

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

Unlimited Civil Case

Date:
Time:
Dept.:
Hon.
Reservation No.

_____ /

THIS MATTER HAVING come before this Court for an Order preliminarily certifying a Settlement Class and preliminarily approving a settlement between Plaintiffs RICARDO MELENDEZ, ANDRES OROZCO; MARTHA LOMELI; and CARLOS CRUZ individually and on behalf of the proposed Settlement Class and Defendant K STREET FINANCE, INC. dba MULLEN FINANCE PLAN, and this Court having reviewed the Settlement Agreement and Release executed by the Parties and the exhibits thereto, that were submitted to the Court with the Motion for Preliminary Approval of Class Action Settlement, and the Parties having consented to the entry of this Order:

IT IS HEREBY ORDERED this ____ day of _____, 2019 as follows:

1. The Court Grants the Motion. This Order of Preliminary Approval incorporates the Agreement, and the defined terms used in this Order shall have the meanings and/or definitions

1 given to them in the Agreement, as submitted to the Court with the Motion for Preliminary
2 Approval of Class Action Settlement.

3 2. For purposes of the settlement, and conditioned upon the settlement receiving final
4 approval at or following the Final Approval hearing, this Court hereby conditionally certifies a
5 Settlement Class, defined as follows and subject to the stated exclusions below:

6 “Settlement Class” means all persons:

7 (a) who purchased a motor vehicle and, as part of that transaction, entered into an
8 agreement subject to California’s Rees-Levering Automobile Sales Finance Act, Civil
9 Code §2981, *et seq.*;

10 (b) whose motor vehicle was repossessed or voluntarily surrendered;

11 (c) who were issued a Notice of Intent to Dispose of Motor Vehicle (“NOI”) by
12 Mullen Finance from May 5, 2010 through August 4, 2016 that gave the consumer the
13 right to reinstate the loan; and

14 (d) against whose account a deficiency balance was assessed.

15 Excluded from the Class are persons (1) whose account were discharged in bankruptcy,
16 (2) against whom Mullen Finance obtained a judgment in Superior Court, and (3) those
17 consumers who appear on the Stipulation of Parties to Exclude Certain Class Members, filed on
18 January 9, 2019.

19 3. The settlement is preliminarily approved by this Court as being fair, reasonable and
20 adequate, free of collusion or indicia of unfairness, and within the range of possible final judicial
21 approval. This Court specifically finds that the settlement resulted from extensive arms-length
22 negotiation, the settlement is sufficient to warrant dissemination of notice of the settlement and
23 of the Final Approval Hearing on said settlement, to the Settlement Class. This Court further
24 finds that Settlement Class Representative and Settlement Class Counsel provisionally are found
25 to fairly and adequately represent the interests of the Settlement Class and to satisfy the
26 requirements to be representatives of and counsel to the Settlement Class, respectively.

27 4. A Final Approval Hearing shall be held on _____, 2019 at _____ a.m./p.m. before the
28 Honorable _____ in Courtroom ___ of the Superior Court of the State of California,

1 County of Orange, located at _____, to consider: (a) the
2 fairness, reasonableness and adequacy of the proposed settlement; (b) whether the settlement
3 should be finally approved by this Court; (c) the application of Settlement Class Counsel for an
4 award of attorneys' fees and expenses; (d) the application for a service award to the Settlement
5 Class Representatives; (e) designation of one or more *cy pres* recipients, conditioned upon the
6 existence of a residue after distribution is completed; (f) and such other matters as this Court may
7 deem proper and necessary.

8 5. The Court approves Kurtzman Carson Consultants as the Settlement Class Administrator,
9 to perform the duties set forth in the Agreement. The Class Representatives, through Class
10 Counsel shall engage Kurtzman Carson Consultants LLC as the Settlement Class Administrator.
11 The fees, costs and expenses of the Settlement Class Administrator shall be subject to
12 reimbursement from the residue, subject to Paragraphs 5.06 and 5.07 of the Agreement. Within
13 fourteen (14) days of the execution of the Settlement Agreement, MULLEN FINANCE shall
14 identify from their records, and provide to the Settlement Class Administrator the Settlement
15 Class member information in electronic form, pursuant to section 3.07. Individual notice shall be
16 sent each member of the Settlement Class via first class postage pre-paid U.S. Mail on or before
17 fourteen (14) days from the issuance of this Order.

18 6. The Settlement Administrator shall provide notice to the Settlement Class substantially in
19 the form as the Settlement Class Notice attached as Exhibit B to the Agreement.

20 7. The Class Notice, as set forth in Exhibit B to the Settlement Agreement, and approved by
21 this Order, is the best notice practicable, and is reasonably calculated, under the circumstances,
22 to apprise the Settlement Class of the pendency of the Action and their right to participate in,
23 object to, or exclude themselves from the settlement. This Court further finds that the Class
24 Notice is due and sufficient notice of the Final Approval Hearing, the settlement, the application
25 for attorneys' fees, and expenses, and service awards, and other matters set forth therein, and that
26 the Class Notice fully satisfies California Rules of Court and due process of law, to all persons
27 entitled thereto.

28 8. Not less than ten (10) days prior to the Final Approval hearing, the Settlement Class

1 Administrator shall provide a declaration to the Parties, to be filed with the Court, attesting to the
2 measures undertaken to provide the Settlement Class Notice to the members of the Settlement
3 Class, and informing the Court of Settlement Class members who requested exclusion, objected
4 to the settlement and/or plan on attending the Final Approval Hearing, along with a copy of the
5 requested exclusion, objection to the settlement, and/or plan to attend.

6 9. Any Settlement Class Member who intends to object to the fairness, reasonableness and
7 adequacy of the settlement must send a written Objection to the Settlement Class Administrator
8 postmarked no later than _____, 2019. Any Objector must set forth his/her full name,
9 current address, dated signature, and telephone number. Objections must be served upon the
10 Settlement Administrator at:

11 KURTZMAN CARSON CONSULTANTS
12 75 Rowland Way
13 Novato, CA 94945
14 (415) 798-5900

15 10. Objectors must state in writing all objections and the reasons therefor, and whether the
16 Objector intends to appear at the Final Approval hearing. No Objector shall be entitled to be
17 heard at the Final Approval hearing, and no written objections or briefs submitted by an Objector
18 shall be received or considered by this Court at the Final Approval hearing, unless the Objector
19 has fully complied with all terms and conditions set forth in the Settlement Class Notice as
20 approved herein. If an Objection is overruled, the Objector will be bound by the terms of the
21 Settlement Agreement and may not exclude himself or herself later. Members of the Settlement
22 Class who fail to file and serve timely written objections in the manner specified above shall be
23 deemed to have waived any objections and shall be foreclosed from making any objection
24 (whether by appeal or otherwise) to the settlement.

25 11. Settlement Class members may elect to exclude themselves from the Settlement
26 Agreement, relinquishing their rights to any and all benefits under the Settlement Agreement.
27 Settlement Class members who exclude themselves from the settlement will not release their
28 claims pursuant to the release set forth in the Settlement Agreement. A Settlement Class
member wishing to exclude himself/herself from the settlement must mail a letter to the

1 Settlement Administrator at the address set forth in ¶ 9, postmarked no later than forty-five (45)
2 days after the date the Class Notice is mailed, which in all respects complies with the terms and
3 conditions for exclusion as set forth in the Class Notice, approved herein, and Settlement
4 Agreement. Settlement Class members who fail to submit a valid and timely request for
5 exclusion shall be bound by all terms of the Settlement Agreement and the Final Approval Order
6 and Judgment, regardless of whether they have requested exclusion from the settlement.

7 12. Any Settlement Class member who submits a timely and complete request for exclusion
8 may not file an Objection to the settlement and shall be deemed to have waived any rights or
9 benefits under the Settlement Agreement.

10 13. The Court shall hold a Final Approval hearing in this matter on _____, 2019.
11 Settlement Class Counsel shall file their Motion for Final Approval and all supporting papers not
12 later than sixteen (16) Court days before the Final Approval hearing. Should MULLEN
13 FINANCE's counsel file briefing in relation to Final Approval, such briefing shall be filed no
14 later than nine (9) Court days before the Final Approval hearing.

15 14. Settlement Class Counsel shall file their motion for award of attorneys' fees and costs
16 pursuant to the terms of the Parties' Agreement at least ten (10) days prior to the date for
17 Settlement Class Members to object to the settlement. In the event that Class Counsel seeks a fee
18 and cost award that does not exceed the amount stated in the Settlement Agreement and Release,
19 MULLEN FINANCE agrees not to negatively comment, oppose, or appeal Class Counsel's
20 application for fees and costs.

21 15. In the event that (a) this Court does not finally approve the settlement substantially as
22 provided in the Agreement; (b) this Court does not enter the Final Order and Judgment as
23 provided in all material respects and substantially in the form set forth in the Agreement and
24 Exhibit C thereto; or (c) the settlement does not become final for any other reason; and if the
25 Parties following reasonable efforts, do not agree in writing to modify the Agreement and the
26 settlement is not consummated, the Agreement shall be null and void and any order entered by
27 this Court in furtherance of this settlement shall be vacated *nunc pro tunc*. In such a case, the
28 Parties shall proceed in all respects as if the Agreement had not been executed and the Parties

1 shall in no way be prejudiced in proceeding with or defending this litigation.

2 16. For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court
3 retains continuing jurisdiction over the settlement proceedings to ensure the effectuation thereof
4 in accordance with the settlement preliminarily approved herein and the related orders of this
5 Court.

6 17. The parties are directed to carry out their obligations under the Agreement.

7 18. Settlement Class Counsel shall serve a copy of this Order on all named parties or their
8 counsel within five (5) days of receipt.

9 **Summary of Applicable Dates**

10 1.	Preliminary Approval Order approved by the Court	
11 2.	Class Notice to be Sent by Class Administrator (¶ 3.10) (Preliminary Approval Order + 14 days)	
12 3.	Motion for Attorneys' Fees and Costs (¶ 5.08) (10 days prior to the expiration of the deadline for Settlement Class members to object)	
13 4.	Exclusion from the Settlement Class postmarked by (¶3.11) (Mailing of Class Notice + 45 days)	
14 5.	Objection from the Settlement Class postmarked by (¶ 3.12) (Mailing of Class Notice + 45 days)	
15 6.	Motion for Final Approval filed by (¶ 4.01) (CCP § 1005) (16 Court days prior to hearing date)	
16 7.	MULLEN FINANCE response, if any, regarding Final Approval (¶ 4.01) (9 Court days prior to hearing date)	
17 8.	Class Administrator Declaration (¶ 3.06(xi)) (10 days prior to hearing date)	
18 9.	Final Approval Hearing (¶ 4.01)	

19
20
21
22
23
24
25 **SO ORDERED**

26 Dated: _____, 2019

27 _____
The Honorable

EXHIBIT B

California Superior Court – County of Orange

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

IF YOUR VEHICLE WAS REPOSSESSED IN CALIFORNIA AND YOU RECEIVED A “NOTICE OF OUR PLAN TO SELL VEHICLE” (“NOI”) FROM K STREET FINANCE, INC. dba MULLEN FINANCE PLAN (“MULLEN FINANCE”), THIS NOTICE CONTAINS IMPORTANT INFORMATION THAT MAY AFFECT YOU
-PLEASE READ IT CAREFULLY-

The Court Ordered This Notice – It Is Not From A Lawyer, And You Are Not Being Sued

This notice summarizes the terms of a proposed class action settlement. This notice also describes what you can do to object to the proposed settlement. If you wish to remain in the Settlement Class, be bound by the settlement and receive the benefits of the settlement, you do not need to do anything. **Please do not contact the Judge, the Court, or Mullen Finance about the settlement.**

Usted puede llamar a 1-800- _____ para solicitar un aviso de clase Settlement mandado en Español.

Basic Information – This Action

A lawsuit entitled *Melendez et al. v. K Street Finance, Inc. dba Mullen Finance Plan* was filed in Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC. Plaintiffs Ricardo Melendez, Andres Orozco, Martha Lomeli, and Carlos Cruz (“Plaintiffs”) filed a class action complaint against Mullen Finance. Plaintiffs allege that some of the Notices of Intent to Dispose of Motor Vehicle (“NOI”) sent by Mullen Finance between May 5, 2010 and August 4, 2016 regarding repossessed vehicles did not comply with California law, and that Mullen Finance is not entitled to collect the deficiency if a deficiency balance remained after a subsequent sale of the vehicle. Plaintiffs brought claims for violation of Civil Code §2983.2, Business & Professions Code §17200, and Declaratory Relief. The Court certified this case as a class action on February 3, 2017.

The Court in charge of the lawsuit is the California Superior Court for the County of Orange. The Court has not decided who is right or wrong in this lawsuit. Mullen Finance is willing to enter into this settlement to end further litigation. The settlement is a compromise. This proposed settlement is not, and should not, be construed as evidence or admission of and any fault, wrongdoing or liability whatsoever on the part of any party to the lawsuit.

The Action is called a “Class Action,” because Plaintiffs are the Settlement Class Representatives suing on behalf of other people with similar claims, called “Settlement Class Members.”

Who Is A Settlement Class Member?

Under the terms of the proposed settlement, you are a Settlement Class Member if all of the following apply to you, and the Court grants final approval of this Settlement.

The term “Settlement Class” is defined as all persons:

- (a) who purchased a motor vehicle and, as part of that transaction, entered into an agreement subject to California’s Rees-Levering Automobile Sales Finance Act, Civil

Code §2981, *et seq.*;

- (b) whose motor vehicle was repossessed or voluntarily surrendered;
- (c) who were issued a Notice of Intent to Dispose of Motor Vehicle (“NOI”) by Mullen Finance from May 5, 2010 through August 4, 2016 that gave the consumer the right to reinstate the loan; and
- (d) against whose account a deficiency balance was assessed.

Excluded from the Class are persons (1) whose account were discharged in bankruptcy, (2) against whom Mullen Finance obtained a judgment in Superior Court; and (3) those consumers who appear on the Stipulation of Parties to Exclude Certain Class Members.

The Settlement Benefits – What You Will Get

If the Settlement is approved by the Court, all Settlement Class Members will receive debt relief and other non-cash monetary benefits. In addition, some Settlement Class Members will be eligible to receive monetary benefits, as described below. If the Settlement is not approved by the Court, Settlement Class Members will not get any benefits and the parties will go back to Court for a trial on the merits of the Action. The parties have made their best efforts to negotiate a settlement that is fair and reasonable under the circumstances.

After diligent investigation of their records, the Parties stipulate that there are 1,206 members of the Settlement Class. According to Mullen Finance’s records, Settlement Class members have a total outstanding deficiency balance of \$2,479,536.74, and a total outstanding Deficiency Balance on Small Claims Actions of \$848,353.62. The total Deficiency Balance collected is \$945,644.80, and the total collected from Small Claims Actions is \$758,115.26. The total collected from Settlement Class members other than from Small Claims Actions is \$187,529.54.

Settlement Class Benefits:

- (1) For all Settlement Class Members, Mullen Finance agrees not to attempt to collect any remaining deficiency balance and will instruct the three credit reporting bureaus, TransUnion, Equifax, and Experian, to delete the trade line referencing Settlement Class members’ accounts.
- (2) Mullen Finance has agreed to refund a total of \$475,000, including the amount of Service Awards, discussed below. If you are a Settlement Class Member who paid any amount toward a deficiency balance after repossession, including but not limited to amounts you were ordered to pay after a small claims court judgment, you will receive the non-monetary benefits described above, **and in addition**, you will receive a check for the pro-rata portion of the \$475,000.00 of the amount you actually paid Mullen Finance toward your deficiency balance. The check will be made out to the first-named borrower on the account.
- (3) If Mullen Finance filed a small claims court action against you, and that small claims court action is still pending, Mullen Finance will dismiss that action with prejudice. If Mullen Finance filed a small claims court action against you and obtained a judgment against you, Mullen Finance will file an acknowledgement of satisfaction of judgment in that small claims action.

You do NOT need to do anything to receive these benefits.

Attorneys’ Fees and Award to Settlement Class Representatives. Settlement Class Counsel may apply to the Court for an award of attorneys’ fees and costs in an amount of \$475,000.00. Plus, Settlement Class Counsel may request from the Court at the time of Final Approval that they be reimbursed up to \$75,000

for costs and expenses from any unclaimed settlement payments. Settlement Class Counsels' fee application will be filed with the Court no later than _____. Mullen Finance has agreed not to negatively comment on the attorneys' fees and costs award, as long as it does not exceed \$475,000.00, plus the \$75,000 for costs and expenses from the residue at the time of Final Approval. In addition, the Settlement Class Representatives Ricardo Melendez, Andres Orozco, Martha Lomeli, and Carlos Cruz will request a service awards of \$1,000 each to Andres Orozco, Martha Lomeli, and Carlos Cruz and \$5,000 to Ricardo Melendez. Any award of attorneys' fees and costs, and any service award, must be approved by the Court at the Final Approval hearing referenced below, and will be paid by Mullen Finance separate and apart from any benefits you may receive under the settlement.

Tax Consequences of Settlement

Any benefits you receive may or may not be the subject of state or federal taxation, depending on your circumstances. Counsel for the Parties in this lawsuit are not tax attorneys and you are advised to seek separate legal advice on matters of taxation.

The Settlement Release – What You Will Give Up

In exchange for the benefits described above, you must give up the right to sue or be part of any other lawsuit against Mullen Finance about the claims based on the facts alleged in this lawsuit. In addition, you will be bound by all orders of the Court and any judgment in this case. The settlement agreement includes a "Release of Claims," which describes exactly what you will give up to receive the settlement benefits.

Your Rights – Exclusion

If you are a Class Member, you are automatically included in the settlement, unless you request to be excluded. If you exclude yourself, you will not receive any benefits of the settlement, but you will not be bound by any judgment or release in this Action and will keep your right to sue Mullen Finance on your own if you want. If you exclude yourself, you may not object to the Settlement.

To exclude yourself from the settlement, you must send a request for exclusion to the Class Administrator at the address below postmarked no later than _____, 2019 [45 days from mailing of class notice], and containing all of the following: (1) The name of the Action "*Melendez v. K Street Finance, Inc. dba Mullen Finance Plan*, Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC" (2) Your full name, current address, telephone number, and the last 4 digits of your Mullen Finance Account number; (3) A statement of your intent to exclude yourself; (4) Your signature and the date you signed it. If you do not follow these procedures to exclude yourself, your rights will be determined in this Action if this settlement receives final judicial approval.

Your Rights – Objection to the Settlement

You may object to the settlement. To object to the settlement, you must send your objection to the Settlement Class Administrator, Kurtzman Carson Consultants at the address provided below, by First Class Mail postmarked no later than _____, 2019 [45 days after the Preliminary Approval Order issues], and provide all of the following: (1) The name of the Action "*Melendez v. K Street Finance, Inc. dba Mullen Finance Plan*, Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC" (2) Your full name, current address, and telephone number, (3) A clear statement of each

objection, (4) All supporting evidence and briefing you wish to have considered in support of the objection, and (5) Your signature and the date of your signature. Objectors are not required to attend the Final Approval Hearing but may do so.

The Final Approval Hearing

The proposed settlement must be finally approved by the Court. The Court has set the Final Approval hearing for _____, 2019 at _____ (subject to change by the Court without further notice), in _____ Courtroom ____, ____ [address] _____ to determine whether the proposed settlement should be approved as fair, reasonable and adequate, whether certification of the Settlement Class is proper, the amount of reasonable attorneys’ fees, costs and expenses, the amount of the Settlement Class Representatives’ service award , and whether the settlement should be finally approved.

You do not need to hire a lawyer but may do so if you want to. You and the Settlement Class are already represented by Settlement Class Counsel listed below, at no out-of-pocket cost to you.

The settlement will not take effect unless and until: (1) the Court approves the settlement at the Final Approval hearing, and (2) a Final Order and Judgment is entered by the Court and no longer subject to appeal. After the Court rules on Final Approval and the time to appeal has expired or appeals are exhausted, the settlement will become final, and you will receive the class benefits set forth above. If the Court does not approve the settlement, Settlement Class members will not receive any benefits described in this notice. It will be as if no settlement had been reached.

More Information

This Notice, which has been approved by the Court, is only a summary. You may call the Settlement Class Administrator (Kurtzman Carson Consultants) directly for updates regarding the Court hearing date, at 1-800-____-_____. If you have additional questions concerning this Action, Notice, or Settlement, you may contact Settlement Class Counsel. The pleadings and other records in this litigation, including the Settlement Agreement, may be examined online at the Orange County Superior Court’s website, at _____, or in person in Room-_____ at the Court Building at: _____, between the hours of _____ a.m. and _____ p.m. Monday through Friday, excluding Court holidays. **Please do not contact the Judge, the Court, or Mullen Finance.**

Usted puede llamar a 1-800- _____ para solicitar un aviso de clase Settlement mandado en Español.

<p>Settlement Class Administrator: KURTZMAN CARSON CONSULTANTS 75 Rowland Way Novato, CA 94945</p>	<p>Settlement Class Counsel: KEMNITZER, BARRON & KRIEG LLP Bryan Kemnitzer Nancy Barron Kristin Kemnitzer 354 Pine St., 5th Floor San Francisco, CA 94104 (800) 520-4525</p>	<p>Counsel for Mullen Finance: CARROL, KELLY, TROTTER, FRANZEN, MCBRIDE & PEABODY Michael Trotter David Pruett 111 W. Ocean Blvd., 14th Floor Long Beach, CA 90802-4646</p>
-------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

RICARDO MELENDEZ; ANDRES
OROZCO; MARTHA LOMELI; and
CARLOS CRUZ,

Plaintiffs

vs.

K STREET FINANCE, INC. dba MULLEN
FINANCE PLAN; and DOES 1 through 50,
inclusive,

Defendants

Case No. 30-2014-00722412-CU-BT-CXC

CLASS ACTION

**[PROPOSED] FINAL ORDER AND
JUDGMENT**

Unlimited Civil Case

Date:
Time:
Dept.:
Hon.
Reservation No.

THIS MATTER HAVING come before the Court for a hearing on _____ pursuant to
the Motion for Final Approval, filed to determine: (1) whether the settlement between Plaintiffs
RICARDO MELENDEZ, ANDRES OROZCO, MARTHA LOMELI, and CARLOS CRUZ,
individually and on behalf of the proposed Settlement Class, on the one hand, and Defendant K

1 STREET FINANCE, INC. dba MULLEN FINANCE PLAN (“MULLEN FINANCE”) on the
2 other hand, is fair, reasonable and adequate, and should be approved as being in the best interests
3 of the Settlement Class, and (2) if so, for the purpose of determining attorneys’ fees and costs
4 requested by Settlement Class Counsel, and (3) for approval of all other matters contained in the
5 aforesaid motion. Notice of the hearing, the settlement and application for attorneys’ fees and
6 reimbursement of expenses having been given as set forth in this Court’s Preliminary Approval
7 Order of _____; all persons present or represented at the hearing who were entitled to be heard
8 having been given an opportunity to be heard; counsel for the Parties having appeared in support
9 of the settlement; and the Court having considered all documents filed in support of the settlement
10 and fully considered all matters raised, all exhibits and affidavits filed and all evidence received at
11 the hearing, all other papers and documents comprising the record herein, and all oral arguments
12 presented to the Court,

13 **IT IS ORDERED, ADJUDGED AND DECREED** on _____ of 2019, that:

- 14 1. This Final Judgment incorporates the Settlement Agreement and Release (“Agreement”), and
15 the capitalized terms used in this Order shall have the meanings and/or definitions given to them
16 in the Agreement, as submitted to the Court with the Motion for Preliminary Approval of Class
17 Action Settlement.
- 18 2. This Court has jurisdiction over the subject matter of this action and over all Parties to this
19 action, including all members of the Settlement Class as that term is defined herein.
- 20 3. This Court certifies this action, for settlement purposes only, as a class action.
- 21 4. The following Settlement Class, provisionally certified by the Court in its Order _____,
22 is hereby certified under California Rule of Court 3.769(d) for settlement purposes only, and is
23 hereinafter referred to as the “Settlement Class”:
- 24 5. “Settlement Class” means all persons:
- 25 (a) who purchased a motor vehicle and, as part of that transaction, entered into an
26 agreement subject to California’s Rees-Levering Automobile Sales Finance Act, Civil
27 Code §2981, *et seq.*;
- 28

- 1 (b) whose motor vehicle was repossessed or voluntarily surrendered;
- 2 (c) who were issued a Notice of Intent to Dispose of Motor Vehicle (“NOI”) by
- 3 Mullen Finance from May 5, 2010 through August 4, 2016 that gave the consumer the
- 4 right to reinstate the loan; and
- 5 (d) against whose account a deficiency balance was assessed.

6 Excluded from the Class are persons (1) whose account were discharged in bankruptcy, (2)

7 against whom Mullen Finance obtained a judgment in Superior Court, and (3) those

8 consumers who appear on the Stipulation of Parties to Exclude Certain Class Members.

9 6. On February 3, 2017, the Court found that the case met the requirements for class

10 certification. The Court finds on the record before it that the requirements for class certification

11 are still met.

12 7. This Court finds on the record before it that the Settlement Class meets the requirements

13 for class certification as it is so numerous that joinder of all members is impracticable.

14 8. This Court finds on the record before it that the Settlement Class meets the requirement for

15 class certification as questions of law or fact common to the issues to be reviewed in connection

16 with the settlement predominate over the questions affecting only individual members for the

17 purpose of implementing the settlement in accordance with the Agreement.

18 9. This Court finds on the record before it that the Settlement Class meets the requirement for

19 class certification as Plaintiff’s claims are typical of the claims of the Settlement Class as a whole.

20 10. This Court finds on the record before it that the Settlement Class meets the requirements

21 for class certification as Plaintiff and Settlement Class Counsel adequately represent and protect

22 the interests of the Settlement Class.

23 11. This Court finds on the record before it that the Settlement Class is appropriate for

24 certification, as such certification is superior to other available methods for the fair and efficient

25 adjudication of the issues before this Court at this time. Manageability issues do not prevent

26 certification here because there will be no trial.

27

28

1 12. The Settlement Class Notice, given to each member of the Settlement Class by mail at
2 updated mailing addresses, constitutes the best notice practicable and is in full compliance with
3 the requirements of California Rules of Court and due process of law.

4 13. This Court finds that the terms of the settlement and the Agreement are the product of
5 arm's length negotiations between the Parties and that the terms thereof are fair, reasonable,
6 adequate, and in the best interests of the Settlement Class and are therefore approved and
7 incorporated herein by the Court.

8 14. The Agreement should be implemented and consummated in accordance with its terms. To
9 the extent already implemented by the parties, such implementation is hereby approved and
10 ratified by the Court.

11 15. Upon Final Judgment, the Settlement Class Representatives and all Settlement Class
12 Members and their heirs, executors, estates, predecessors, successors, assigns, agents and
13 representatives shall be deemed to have jointly and severally released and forever discharged
14 MULLEN FINANCE and Related Parties, as defined in the Agreement, from any and all claims
15 that were or could have been asserted in the Action based on the facts alleged in the Action, as
16 provided in the Agreement.

17 16. The terms of the Agreement and this Final Order and Judgment shall be forever binding
18 on, and shall have *res judicata* effect in any pending or future lawsuits or proceedings that may be
19 brought or maintained by or on behalf of any Settlement Class Members. This Court hereby bars
20 and enjoins: (i) all Settlement Class Members, and all persons acting on behalf of, or in concert or
21 participation with, such Settlement Class Members, from filing, commencing, prosecuting,
22 intervening in, or participating in, any lawsuit in any jurisdiction on behalf of any Settlement Class
23 Member, based upon or asserting any of the claims released in the Agreement; and (ii) all
24 Settlement Class Members, and all persons acting on behalf of or in concert or participation with
25 such Settlement Class Members, from bringing a class action on behalf of Settlement Class
26 Members or seeking to certify a class which includes such Settlement Class Members, in any
27 lawsuit based upon or asserting any of the claims released in the Agreement.

28

1 17. Attached to this Final Order and Judgment as **Exhibit 1** is a true and correct list of all class
2 members who originally received class notice, but whom the Parties agreed to exclude from the
3 final Settlement Class. The Parties stipulated to exclude these consumers in the Stipulation of
4 Parties to Exclude Certain Class Members. No Settlement Class Members, other than those listed
5 in **Exhibit 1**, are excluded from the Settlement Class, or from the effect of this Final Order and
6 Judgment.

7 18. It is expressly determined that there is no just reason for delay and the entry of this Final
8 Order and Judgment is hereby directed. In the event that this Final Order and Judgment is
9 appealed, its mandate will automatically be stayed until and unless the Final Order and Judgment
10 is affirmed in its entirety by the court of last resort to which such appeal(s) has (have) been taken
11 and such affirmance is no longer subject to further appeal or review.

12 19. This Final Order and Judgment is final for purposes of appeal and may be appealed, and
13 the Clerk is hereby directed to enter judgment thereon.

14 20. A total service award of \$5,000.00 to Settlement Class Representative RICARDO
15 MELENDEZ is hereby approved as fair and reasonable. A service award of \$1,000.00 each to
16 Settlement Class Representatives ANDRES OROZCO, MATHA LOMELI, and CARLOS CRUZ
17 is hereby approved as fair and reasonable. MULLEN FINANCE shall make such payment in
18 accordance with the terms of the Agreement.

19 21. The Court, having reviewed the Stipulation Regarding Award of Attorneys' Fees, Costs
20 and Expenses, as well as the declarations, exhibits, and points and authorities submitted in support
21 thereof, finds that an award of \$475,000.00 is reasonable and appropriate under all of the
22 circumstances presented. MULLEN FINANCE shall pay this amount to Kemnitzer, Barron &
23 Krieg, LLP under the terms set forth in Section 5.08 of the Settlement Agreement and Release.
24 Such payment of attorneys' fees and costs shall be separate from and in addition to the monetary
25 relief to the Settlement Class and shall not reduce such relief.

26 22. The Class Administrator is directed to distribute the Residue, if any, as follows, no later
27 than fifteen (15) days after the check stale date, which is ninety (90) days from the date of
28

1 distribution of the Settlement Funds:

2 (a) \$75,000.00 shall be paid to Class Counsel as reimbursement for costs and expenses;

3 (b) Any remaining Residue, after the payments set forth above, shall be paid as *cy pres* to the
4 Public Law Center in Santa Ana, a non-profit organization that meet the criteria set forth in
5 California Code of Civil Procedure §384.

6 23. Any and all objections to the settlement and the Agreement are overruled as being without
7 merit.

8 24. In the event that the settlement does not become effective in accordance with the terms of
9 the Agreement, then this Final Order and Judgment shall be rendered null and void and be vacated
10 and the Agreement and all orders entered in connection therewith shall be rendered null and void.

11 25. The Parties are directed to carry out their obligations under the Agreement. The Class
12 Administrator shall file a final compliance declaration after distribution is complete.

13 26. By operation of the laws of the State of California, Mullen Finance shall and hereby is
14 enjoined and restrained by operation of state law Civil Code §2983.2(a) from taking any further
15 steps to collect any amounts purportedly owed by any member of the Settlement Class arising out
16 of a deficiency following repossession. MULLEN FINANCE shall immediately cease and shall
17 not resume any such collection efforts. Furthermore, because the Court finds, as a matter of state
18 law, that the NOI issued to the Class did not strictly comply with California law, Civil Code
19 §2983.2, MULLEN FINANCE is barred by state law from collecting deficiency balances from the
20 Class. Upon execution of the Settlement Agreement and Release, MULLEN FINANCE declared
21 that it recalled the accounts of Settlement Class members from any internal collection
22 departments; recalled and/or repurchase the account of any Settlement Class members that were
23 assigned to any outside collection agencies; recalled any accounts of Settlement Class members
24 that have been assigned to legal counsel; and dismissed any pending legal action against any
25 Settlement Class member, including but not limited to filing an acknowledgement of satisfaction
26 of judgment in every Small Claims Action against any Settlement Class Member.

27

28

1 27. Consistent with IRS PLR Number 200212004, MULLEN FINANCE is not required to
2 issue 1009-Cs to any class members and is not subject to the reporting requirements of the Internal
3 Revenue Code section 605P.

4 28. Jurisdiction is hereby reserved by this Court to assure compliance with all terms of this
5 settlement, in accordance with the Agreement and this Final Order and Judgment. After
6 distribution is complete, MULLEN FINANCE shall file a declaration stating compliance with the
7 terms of the settlement and the Settlement Class Administrator shall file a declaration stating it has
8 complied with the terms of the settlement.

9 29. Settlement Class Counsel shall serve a copy of this Order on all named parties or their
10 counsel within five (5) days of receipt.

11

12 **SO ORDERED**

13 Dated: _____, 2015

The Honorable _____

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

EXHIBIT 1

LIST OF SETTLEMENT CLASS MEMBERS WHO TIMELY REQUESTED EXCLUSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT D

PAYMENT GUARANTY

This Payment Guaranty (“**Guaranty**” or “**Agreement**”) is made by and between George Hurley as “**Guarantor**,” in favor of Kemnitzer Barron & Krieg LLP as “**Principal**” effective as of the date set forth at the end of this Guaranty.

Factual Background

A. The Guarantor is executing this Guaranty to induce Principal to enter into the Settlement Agreement and Release (“**Agreement**”) on behalf of the Settlement Class in the case of *Melendez v. K Street Finance, Inc. dba Mullen Finance Plan*, Orange County Superior Court, Case No. 30-2014-00722412-CU-BT-CXC, which obligates K STREET FINANCE INC. dba MULLEN FINANCE PLAN (“**MULLEN FINANCE**”) (“**Obligor**”) with respect to the following: \$475,000.00 in attorneys’ fees and costs paid to Kemnitzer Barron & Krieg LLP in four equal yearly installments of \$118,750.00 as set forth in Section 5.08 of the Agreement (the “**Guaranteed Obligation**”). The term “**Guaranteed Obligation**” as used in this Guaranty means the principal sum of the Guaranteed Obligation (as evidenced by the Settlement Agreement and Release), or so much thereof as may be outstanding from time to time, and all other sums other than principal or interest that may or shall become due and payable pursuant to the provisions of the Guaranteed Obligation or this Guaranty.

Guaranty

1. For valuable consideration, receipt of which is hereby acknowledged, Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to Principal, as and when payment is due, the full, faithful, and timely payment of all sums of money due to Principal under the Guaranteed Obligation payable by, or due and owing from, Obligor, and any successor in interest to Obligor (and all references in this Guaranty to Obligor shall be deemed to include and incorporate the reference to each of the foregoing persons), and including all amendments, modifications, renewals, extensions, supplements, substitutions, and replacements of the Guaranteed Obligation (together, the “**Guaranteed Obligations**”). In addition to the foregoing, Guarantor agrees to pay all costs and expenses incurred by Principal in any action to enforce, collect, interpret, or realize upon this Guaranty, including reasonable attorneys’ fees, costs, and disbursement, as further provided in Section 7. The obligations of Guarantor under this Guaranty shall be absolute, unconditional, and irrevocable.

2. If Obligor defaults at any time in the payment or performance of any of the Guaranteed Obligations, upon demand by Principal Guarantor shall fully and promptly pay such Guaranteed Obligations.

3. The obligations of Guarantor under this Guaranty shall not be affected, modified, or impaired by the occurrence of any of the following events, whether or not with notice to, or the consent of, Guarantor (excerpt as expressly provided to the contrary in Section 8(c)): (a) the waiver, surrender, compromise, settlement, release, or termination of any or all of the Guaranteed Obligations; (b) the extension of the time for the payment, performance, or discharge of any of the Guaranteed Obligations; (c) subject to Section 8(c), the amendment or modification (whether material or otherwise) of the Guaranteed Obligations in any respect; (d) any failure, omission, delay, or lack on the part of Principal to enforce, assert, or exercise any right, power,

or remedy conferred on Principal under the Guaranteed Obligation; (e) the release or discharge by operation of law of Obligor from the payment, performance, or discharge of any or all of the Guaranteed Obligations; or (f) the invalidity or unenforceability of any or all of the Guaranteed Obligations as against Obligor. Guarantor acknowledges that Principal would not enter into the Guaranteed Obligation without this Guaranty and that Principal is relying on this Guaranty.

4. The obligations of Guarantor under this Guaranty are independent of the Guaranteed Obligations. Guarantor agrees that Principal shall have the right to proceed against Guarantor directly and independently of Obligor. A separate action may be brought and prosecuted against Guarantor whether or not an action is brought against Obligor or Obligor is joined in any such action. Subject to Section 8(c), Guarantor authorizes Principal and Obligor, without notice to, demand of, or consent from Guarantor and without releasing or affecting Guarantor's liability under this Guaranty, from time to time to amend, modify, renew, extend, supplement, or replace the Guaranteed Obligation or the Guaranteed Obligations or otherwise change any or the terms of Guaranteed Obligations, to take and hold security for the Guaranteed Obligations, and to enforce, waive, surrender, impair, compromise, or release any such security or any or all of the Guaranteed Obligations or any person or entity liable for any or all of the Guaranteed Obligations. Guarantor shall be and remain bound under this Guaranty notwithstanding any such act or omission by Obligor or Principal. Guarantor waives all rights under Section 2845 of the California Civil Code and waives the right to require Principal to proceed against Obligor, to proceed against or exhaust any security held by Principal, or to pursue any other remedy in Principal's power. Principal shall have the right to exercise any right or remedy it may have against Obligor or any security held by Principal. Guarantor waives all rights under Section 2849 of the California Civil Code and waives the right, if any, to the benefit of, or to direct the application of, any security held by Principal. Guarantor waives (a) any defense arising out of any alteration of the Guaranteed Obligations, (b) any defense arising out of the absence, impairment, or loss of any right of reimbursement or subrogation or other right or remedy of Guarantor against Obligor or any security held by Principal, and (c) any defense arising by reason of any disability or other defense of Obligor or by reason of the cessation or reduction from any cause whatsoever of the liability of Obligor other than full payment, performance, and discharge of the Guaranteed Obligations. To the extent that this Guaranty is construed as a continuing Guaranty, as defined in California Civil Code section 2814, Guarantor hereby expressly waives any right to revoke the Guaranty contained in California Civil Code section 2815.

5. If Obligor becomes insolvent or commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its Guaranteed Obligations under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeks to have an order for relief entered against it as debtor, or seeks appointment of a receiver, for it or for all of any substantial part of its property (collectively, a "**Proceeding**"), or if a Proceeding is filed or commenced against Obligor, or Obligor makes a general assignment for the benefit of creditors, and in any such Proceeding any or all of the Guaranteed Obligations are terminated or rejected or any or all of the Guaranteed Obligations are modified or abrogated, Guarantor agrees that Guarantor's liability under this Guaranty shall not thereby be affected or modified and such liability shall continue in full force and effect as if no such action or proceeding had occurred. This Guaranty shall continue to be effective or be reinstated, as the case may be, if any payment of the Guaranteed Obligations must be returned by

Principal upon the insolvency, bankruptcy, or reorganization of Obligor, Guarantor, or otherwise, as though such payment had not been made.

6. Guarantor assumes the responsibility for being and keeping Guarantor informed of the financial condition of Obligor and of all other circumstances bearing upon the risk of failure to pay, perform, or discharge any of the Guaranteed Obligations that diligent inquiry would reveal, and Guarantor agrees that Principal has no duty to advise Guarantor of information known to Principal regarding such condition or any such circumstance.

7. Guarantor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor and notices of acceptance of this Guaranty. Guarantor agrees to pay all costs and expenses, including reasonable attorneys' fees and costs, that are incurred by Principal in connection with or incidental to any default by Guarantor in the performance or observance of any provision contained in this Guaranty, or the exercise or enforcement by Principal of any of its rights or remedies under this Guaranty, including the enforcement, compromise, or settlement of the obligations of Guarantor arising under this Guaranty or the defense or assertion of any rights and claims of Principal under this Guaranty, by litigation or otherwise. Guarantor agrees that recourse may be had against his community assets, if any, and against his separate property for the satisfaction of all obligations hereby guaranteed.

8. Until the Guaranteed Obligations shall have been paid and performed in full, all of the rights, privileges, powers, and remedies granted to Principal under this Guaranty shall continue to exist and may be exercised by Principal at any time and from time to time irrespective of the fact that any of the Guaranteed Obligations may have become barred by any statute of limitations.

9. General

(a) This Guaranty shall be binding upon the Guarantor and each of Guarantor's heirs, executors, personal representatives, successors, and assigns. This Guaranty shall inure to the benefit of Principal its heirs, executors, personal representatives, successors, and assigns.

(b) This Guaranty shall be governed by and construed in accordance with the laws of the State of California. If all or part of any one or more of the provisions contained in this Guaranty is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions, and this Guaranty shall be equitably construed as if it did not contain the invalid, illegal, or unenforceable provision. Regardless of place of execution by any party, this Guaranty shall be deemed to be entered into in San Francisco, California.

(c) Notwithstanding anything contained in this Guaranty, copies of all notices to Obligor declaring a default under the Guaranteed Obligation required to be sent to Obligor under the Guaranteed Obligation shall be sent to Guarantor at the address provided below in this Guaranty. However, so long as Guarantor is a shareholder, member, partner, manager, or equity participant in the then current Obligor under the Guaranteed Obligation, the failure to provide such copies to

Guarantor shall not, in and of itself, impair, or affect Guarantor's obligations under this Guaranty.

(d) The obligations of each Guarantor under this Guaranty shall be joint and several. This Guaranty may be executed in a number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

(e) This Guaranty and the documents expressly described or referred to in this Guaranty constitute all of the understandings and agreements existing between the parties concerning the subject of this Guaranty and the rights and obligations created under it.

(f) This Guaranty and any term of this Guaranty may be amended, waived, discharged, or terminated only by a written instrument signed by the parties against whom enforcement of such amendment, waiver, discharge, or termination is sought.

(g) Any indebtedness of Obligor to Guarantor now or hereafter existing (including any rights of subrogation Guarantor may have as a result of any payment by Guarantor under this Guaranty), together with any interest thereon, shall be, and is, hereby deferred, postponed, and subordinated to the prior payment in full of the Guaranteed Obligations.

(h) Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor, and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation, or incurring of new or additional Guaranteed Obligations.

(i) No delay or omission of Principal to exercise any right, power, or remedy accruing to any party to this Guaranty, upon any breach or default of Guarantor shall impair any such right, power, or remedy; nor shall any such delay or omission be construed to be a waiver of, or an acquiescence in, any such breach or default or any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Guaranty, or any waiver, on the part of Principal, of any provisions or conditions of this Guaranty, must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Guaranty or by law and otherwise afforded to Principal, shall be cumulative and not alternative.

(j) If all or part of any one or more of the provisions contained in this Guaranty is for any reason held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions, and this Guaranty shall be equitably construed as if it did not contain the invalid, illegal, or unenforceable provision.

(k) Whenever appropriate in this agreement, terms in the singular form shall include the plural (and vice versa) and any gender form shall include all others. "Including" means "including without limitation" unless otherwise specifically required by context. Defined terms as used in this agreement include all appropriate word variations of such terms, including tense and number variations. Section, paragraph, and similar headings are for the convenience of the parties and do not form a part of this Agreement. References in this agreement to sections,

paragraphs, and exhibits are references to sections, and paragraphs in this agreement and exhibits attached to this agreement unless specified otherwise.

(l) Any document, including, without limitation, counterparts of this agreement, may be transmitted by facsimile, email, or other electronic means and upon receipt shall be deemed an original; provided that upon demand of the recipient, the sender within a reasonable time of such demand shall mail or deliver an originally signed copy of such document.

(m) Time is of the essence of each and every provision of this agreement.

(n) This Guaranty is intended to give rise to absolute and unconditional obligations of Guarantor; hence, this Guaranty shall be construed strictly in favor of Principal in order to accomplish its stated purpose. The parties agree that this Guaranty is a negotiated Guaranty, with each party free to review and negotiate each section of the Guaranty and otherwise clarify all sections of the Guaranty that appear to the party (at the time of signing) to be ambiguous or unclear. All parties shall be deemed to be the drafting parties, and the rules of construction to the effect that any ambiguities are to be resolved against the drafting party or parties shall not be employed in the interpretation of this Guaranty.

(o) Guarantor represents, warrants, and agrees that this Guaranty and each of the waivers and consents set forth in this Guaranty are made with full knowledge of their significance and consequences, with the understanding that events giving rise to any defense or right waived may diminish, destroy or otherwise adversely affect rights that Guarantor otherwise may have against Obligor, Principal, or others, and that under the circumstances the waivers and consents given are reasonable and not contrary to public policy or law.

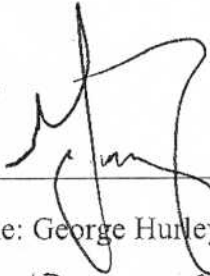
(p) This Guaranty shall be governed by and construed in accordance with the laws of the State of California. Each party or person executing this agreement hereby states that he or she has carefully read this agreement and knows its contents, that his or her duly authorized counsel has explained this agreement to him or her to the extent that the party has determined necessary or desirable to obtain such counsel, that he or she fully understands and appreciates its words and terms and knows their effect, and that he or she has executed this agreement voluntarily as his or her own free act and of his or her own free will and accord.

(q) Each person executing this agreement on behalf of an entity or another person warrants that he or she has the power and authority to execute this agreement on behalf of such entity or other person.

[Signatures on following page]

Dated: 5/2, 20 19

Guarantor



Print Name: George Hurley

Address: 13672 Goldenwest St St. H
Westminster, CA 92683

EXHIBIT B

- *Aguilar, Canton, Owens and Eaton v. Citizens Automobile Finance, Inc.: RBS Citizens, N.A.*, Civil No.: C 10-05345JSW (Northern District of California)
- *Ally Financial, Inc. v. Lazrovich, et al*, Civil No. 111CV195659 (Santa Clara Superior Court)
- *Ahsan v. Valencia Dodge*, Civil No. 307512 (San Francisco Superior Court)
- *Alta Vista Credit Union v. Campbell, et al., and Related Cross Action*, Case No.: CIVDS1009450 (San Bernardino County Superior Court)
- *Asabi v. A-L FINANCIAL Consumer USA Inc. dba Drive Financial Services*, Civil No. RG09443628 (Alameda Superior Court)
- *Arguelles-Romero, et al. v. Americredit Financial Services, Inc.*, Civil No. BC410509 (Los Angeles Superior Court)
- *Assett Acceptance Corporation v. Niumalelega*, Civil No. 03-424751 (San Francisco Superior Court)
- *Baker v. GEMB, Inc. et al.* Civil No. C10-05261SBA (United States District Court for the Northern District of California)
- *Bang and Johnson v. United States Fidelity and Guaranty Co., et al.*, Civil No. RG06273805 (Alameda County Superior Court)
- *Bank of Stockton v. Tolentino, et al.*, Civil No. CV 160904 (Santa Cruz Superior Court)
- *Banks v. JP Morgan Chase, N.A.*, Civil No. RG12614875 (Alameda Superior Court)
- *Bohannan v. Professional Cycle Parts*, Civil No. 34-2011-00108983 (Sacramento Superior Court)
- *Bryan v. Franklin Capital Corp.*, Civil No. BC 340574 (Los Angeles Superior Court)
- *Buzenes v. Nuwell National Auto Finance LLC*, Los Angeles Superior Court Case No. BC407366
- *Castro, Sanchez v. Industrial Acceptance Company*, Civil No.: RG11591326 (Alameda County Superior Court – Northern Division)
- *Caras/Johnson v. Hyundai Capital America*, Los Angeles Superior Court Case No. BC 565263
- *California Community Credit Union v. Chapman*, Sacramento County Superior Court Case No. 34-2009-00054626
- *Cisneros v. American General Financial Services, Inc.*, Civil No. 3:11-cv-02869 (Northern District of California)
- *Conway v. Phillios & Cohen Associates, Ltd.*, Civil No. 5:15-cv-02388 (Central

District of California)

- *Cooper v. ROHL, LLC.*, Case No. 4MSC15-00352 (Contra Costa County Superior Court)
- *Cooperrider v. First Metropolitan Credit Union*, Civil No. BC321978 (Alameda County Superior Court)
- *Cordero v. American Honda Finance Corporation* Civil No. 531470 (San Mateo County Superior Court)
- *Cross v. Ford Motor Company*, Civil No. BC281465 (Los Angeles Superior Court)
- *Croxton v. Ford Motor Company*, Civil No. MSC02-02311 (Contra Costa Superior Court)
- *Dadian v. Westlake Services, Inc.*, Civil No. BC322765 (Los Angeles Superior Court)
- *DaimlerChrysler Financial Services Americas LLC v. Pryer, et al.*, Civil No. RIC 470466 (Riverside Superior Court)
- *Davis v. Volvo Finance North America*, Civil No. 03AS00938 (Sacramento Superior Court)
- *Dawson v. Honda Financial Services*, Civil No. RG 09443611 (Alameda Superior Court)
- *DePaula v. Green Tree Servicing LLC*, Civil No. BC322375 (Los Angeles Superior Court)
- *Dilsworth v. Kia Motors of America*, Civil No. H 219121-0 (Alameda County Superior Court)
- *DeLuca v. Wescom Central Credit Union*, Los Angeles County Superior Court, Case No. BC472473
- *Dixon v. County Financial Services, Inc.*, Civil No. RG10537949 (Alameda Superior Court)
- *Estrada v. Beneficial California*, Civil No. CV785139 (Santa Clara Superior Court)
- *Eugene, et al. v. A-L Finacial Corp*, Sacrament County Superior Court, Case No. 34-2011-00099541
- *Ferreras v. Too Fast, Inc.*, Civil No. BC600720 (Los Angeles Superior Court)
- *Fireside Bank v. Gonzales, et al., and Related Cross-Action*, Los Angeles County Superior Court, Case No. BC 445836
- *Ford Motor Credit Co. v. O'Neal, et al.*, Civil No. 37-2007-00077225-CL-CL-SC

(San Diego Superior Court)

- *Foster v. Repossess Auto Sales, et al.*, Civil No. BC 386112 (Los Angeles Superior Court)
Friedrichs v. BMW Financial Services, U.S.D.C. C08-4486 PJH (Northern District of California)
- *Gitti v. Mercedes Benz Credit*, Civil No. BC359251 (Los Angeles County Superior Court)
- *Gonzalez v. Hayward Dodge*, Civil No. H208451-4 (Alameda Superior Court)
- *Graham v. DaimlerChrysler*, Civil No. BC215624 (Los Angeles County Superior Court)
- *Grans v. SAFE Credit Union*, Contra Costa Superior Court, Case No. C11-02692
- *Guillermo v. RLB, Inc.*, Civil No. 12878 (Solano Superior Court)
- *Gutierrez v. Auto West, Inc.*, Civil No. 317755 (San Francisco Superior Court)
- *Hamm v. Consumer Portfolio Services, Inc., et al*, 34-2010-00081238 (Sacramento Superior Court)
- *Hardcastle v. Bank of Stockton*, Sacramento County Superior Court, Case No. 34-2013-00148919
- *Harrell v. US Bancorp*, Civil No. BC324881 (Los Angeles Superior Court)
- *Jekowksy v. BMW of North America, LLC*, U.S. District Court Case No. CV132158
- *Johnson, Caras, Larsen v. Hyundai Capital America d/b/a Kia Motors Finance*, Civil No. BC565263, Los Angeles Superior Court
- *Jones v. Centerone Financial Services, LLC*, Case No. 3:14-CV-01673 SI
- *King v. California Republic Bank, Orange County Superior Court*, Case No. 30-2013-00655804-CU-BT-CXC
- *Lanier v. Infiniti Financial Services*, Civil No. BC359250 (Los Angeles Superior Court)
- *Leon v. Chase Chevrolet*, Civil No. CV 004173 (San Joaquin Superior Court)
- *Levasseur v. Westlake Motors*, Civil No. 998204 (San Francisco Superior Court)
- *Lewis v. Systems & Services Technology, Inc.*, Los Angeles County Superior Court, Case No. BC556372
- *Liedorff v. Centerone Financial Services LLC*, U.S.D.C. C 08-5455 MHP (Northern District of California)

- *Lobel Financial Auto Cases*, JCCP No. 4563 (Sacramento Superior Court)
- *Macias v. General Motors*, Civil No. 223837 (Ventura County Superior Court)
- *Macias v. Allan Motor Company*, Civil No. RG03114711 (Alameda Superior Court)
- *McCoy, et al. v. Alliant Credit Union*, Civil No. RG 09-444283 (Alameda Superior Court)
- *Melendez v. K Street Finance, Inc.* Civil No. 30-2014-00722412 (Orange County Superior Court)
- *Merco Credit Union v. Jim Vanburen, et al.*, Merced County Superior Court, Case No. CV001627
- *Meyer v. First City Credit Union*, Civil No. BC386098 (Los Angeles Superior Court)
- *Meza v. ACC Consumer Finance LLC*, Civil No. RG094558893 (Alameda Superior Court)
- *Mohammadi v. Chuck Obershaw Toyota*, Civil No. 998205 (San Francisco Superior Court)
- *Montes v. Kinecta Federal Credit Union*, Civil No. 30-2015000789292 (Orange County Superior Court)
- *Morrison v. Credit Acceptance Corp.* No. C 10-00549 PHJ (N.D. California)
- *Murillo v. All Building*, Civil No. 01044014 (Santa Barbara Superior)
- *Navarrette v. HSBC Auto Finance, Inc.*, Sacramento County Superior Court Case No. 34-2008-00020740
- *Nguyen v. AT&T Wireless Services, Inc.*, Civil No. 03AS06083 (Sacramento Superior Court)
- *Novo Gradac v. Lithia Motors, Inc.*, Civil No. CO2-03574 (Contra Costa County Superior Court)
- *Orizabal v. LBS Financial Credit Union*, Civil No. (Los Angeles Superior Court)
- *Pacific Service Credit Union v. Eugenia Aguilar Hernandez, et al.*, Fresno County Superior Court, Case No. 06ECG03625 JH
- *Padilla v. Premier Auto Credit, et al.*, Los Angeles County Superior Court, Case No. BC482350
- *Palacios v. Discount Finance Corp., et al.*, Los Angeles County Superior Court, Case No. BC470675
- *Peña v. Modesto Toyota*, Civil No. 991606 (San Francisco Superior Court)

- *Peraza v. Nissan Motor Acceptance Corporation*, Civil No. BC 201048 (Los Angeles Superior Court)
- *Pha v. Yia Yang*, Civil No. 2:12-cv-01580 (Eastern District of California)
- *Quality Financial, Inc. v. Castillo, et al., and Related Cross-Action*, Los Angeles Superior Court, Case No. KC061825
- *Ralston v. Wells Fargo Bank*, Civil No. CGC04433286 (San Francisco Superior Court)
- *Ramirez v. Balboa Thrift and Loan Association, and Related Actions*, San Diego County Superior Court, Case No. 37-2009-00099225-CU-BT-CTL
- *Rhodes v. Gateway One Lending & Finance, LLC*, Civil No. C16-00659 (Contra Costa Superior Court)
- *Richardson v. Wells Fargo Auto Finance, Inc.*, Civil No.: CGC-08-481662 (San Francisco County Superior Court)
- *Rodriguez v. Hyundai Motor Finance Company*, Civil No.: 05CC05238 (Orange County Superior Court)
- *Ruiz v. Credit Acceptance Corp.*, Civil No. BC 193888 (Los Angeles Superior Court)
- *SafeAmerica Credit Union v. Marlyn Turla, et al.* Civil No.: 106CV068292 (Santa Clara Superior Court)
- *Safe Credit Union v. Martin, et al.*, Civil No. 06AM05906 (Sacramento Superior Court)
- *Salazar v. 1st Pacific Credit Union*, Civil No. 06AS01213 (Sacramento Superior Court)
- *Salimi v. BMW Financial Services, et al.*, USDC Northern District of California, Case No. C12-01754 JSW
- *Santos v. Meriwest Credit Union*, Civil No. RG09480463 (Alameda Superior Court)
- *Serrano v. Chase Chrysler Plymouth*, Civil No. CV 007771 (San Joaquin Superior Court)
- *Shabestari v. MS Services, LLC*, Civil No. 34-2017-00210831 (Sacramento Superior Court)
- *Stephens v. Bay Federal Credit Union*, Civil No. CGC-08-478197 (San Francisco Superior Court)
- *Sutherland v. Santander Consumer USA, Inc.*, Alameda County Superior Court, Case No. RG10507124
- *Tamayo v. Brainstorm*, Civil No. C01-20386 JF (RS) (USDC-NDC)

- *TK Credit Recovery v. Blaurock, and Related Cross-Action*, Alameda County Superior Court, Case No. RG13676609
- *TK Credit Recovery v. Macias, and Related Cross-Action*, Contra Costa County Superior Court, Case No. C14-00919
- *Tolentino v. Bank of Stockton*, Civil No. CV 160904 (Santa Cruz Superior Court)
- *The Best Service Co. v. Skehan*, Civil No. CGC01192657 (San Francisco Superior Court)
- *United Auto Credit Corporation v. Mesngon*, Civil No. HG14747897 (Alameda Superior Court)
- *Villalpando v. South Bay Toyota*, Civil No. 306599 (San Francisco Superior Court)
- *Vitcov v. General Motors*, Civil No. BC 179634 (Los Angeles Superior Court)
- *Vitrano v. Santander Consumer USA Inc.*, Civil No. 2:13-cv-02492-AB-MRW (United States District Court for Central District of California)
- *Walker v. Westlake Financial Services*, Civil No. BC436725 (Los Angeles Superior Court)
- *Wallace v. East Bay Motorsports, Inc*, Alameda County Superior Court Case No. RG11579995
- *Warsinske v. Bank of America*, Civil No. 04-432072 (San Francisco Superior Court) (JCCP4378 – Los Angeles Superior Court)
- *Washington v. Citizens Equity First Credit Union*, Civil No. RG12636668 (Alameda Superior Court)
- *White v. Topaz Financial Services, LLC, et al.*, Los Angeles County Superior Court, Case No. BC472910
- *Wiggins v. Heritage Community Credit Union*, Civil No. 05AS02705 (Sacramento Superior Court)
- *Williams v. Tidewater Finance Company, et al.*, Los Angeles County Superior Court, Case No. BC487314
- *Willoughby v. DT Credit Corporation*, Civil No. BC336262 (Los Angeles Superior Court)
- *Wimberly v. Triad Financial Corporation*, Civil No. 30-2008-00059511 (Orange County Superior Court)
- *Yeh v. Nissan Motor Acceptance Corporation*, Civil No. 768021 (Santa Clara Superior Court)
- *Young v. Rudolph Incorporated, et al.*, Sacramento County Superior Court, Case

No. 34-2009-00064451

EXHIBIT C



Public Law Center

The Public Law Center, Orange County's non-profit *pro bono* law firm, provides access to justice for low-income residents

Now in its 38th year of service, PLC works with 1,600 Orange County lawyers, paralegals, law students and others who volunteer their time and expertise to assist low-income and vulnerable Orange County residents.

Our clients' cases cover a wide range of issues including domestic violence, human trafficking, guardianship, housing, health, bankruptcy, asylum, family law, consumer fraud and immigration. We also provide free legal advice and representation to Orange County non-profit organizations, so they can better meet their legal obligations and focus on providing services.

Each year, PLC staff and volunteers provide over 65,000 hours of free legal services in handling over 4,600 cases and benefitted more than 8,000 low-income children, adults and seniors in Orange County. The estimated annual value of this work is over \$20 million.

PLC's work is a mix of direct representation, brief counsel and advice, recruitment, training and mentoring of lawyers and law students, training of staff at non-profit organizations, law enforcement and other governmental agencies, advocacy before local, state and federal policy makers and strategic impact litigation to challenge societal injustices.

PLC's staff of 40, led by Executive Director & General Counsel Ken Babcock, provides direct services to clients and also makes certain that our volunteers have the tools necessary to properly assist those clients referred to them. Our volunteers include partners and associates at major law firms, in-house corporate counsel, solo and small firm practitioners, young lawyers, law students, college students and an array of others concerned about ensuring access to justice. For most lawyers and law students in Orange County, PLC is the place to turn when they think of volunteering to provide legal services.

PLC's Services

Courthouse Based Self-Help Clinics

PLC operates a Pro Se Clinic at the U.S. District Court in Santa Ana providing information and advice regarding federal cases on foreclosure, employment discrimination, Social Security appeals, forfeiture and other matters. PLC also provides assistance to individuals who are handling their own Chapter 7 bankruptcy cases at the Bankruptcy Court in Santa Ana, who are seeking a domestic violence restraining order or who are handling their own Guardianship proceedings at the Superior Court.

Operation Veterans Re-Entry

PLC provides free legal assistance to those who have served our country, particularly those veterans who are homeless or at risk of becoming homeless.

Citizenship Assistance

Working with several other organizations, PLC leads the New Americans Collaborative campaign in Orange County. Through large community fairs and smaller community workshops, the collaborative provides assistance to Lawful Permanent Residents who seek to become naturalized United States citizens. Over 5,000 low income residents have become naturalized U.S. citizens through the efforts of our collaborative.

Homelessness Prevention Legal Assistance

PLC assists homeless individuals through Share Our Selves, a long time homeless services provider in Costa Mesa, and the County's new year round shelter, Bridges at Kraemer Place.

(Over)



Public Law Center

Impact Advocacy & Litigation

PLC seeks to address broader issues that affect more than just the individual clients who come through our door. We are involved in a variety of advocacy efforts involving affordable housing, health care, immigration and consumer law. In collaboration with other advocates, PLC works to develop solutions to these systemic problems whether through advocacy or strategic impact litigation. Recent cases have involved precedent setting Ninth Circuit cases involving immigration and bankruptcy law as well as state court victories involving affordable housing.

AIDS Legal Assistance Project (ALAP)

PLC provides civil legal services to indigent persons living with HIV or AIDS. Working closely with various community groups and the Orange County Health Care Agency, PLC assists clients with wills and estate planning, advance health care directives, conservatorships, immigration, bankruptcy, discrimination, employment, health care access, disability rights and landlord/tenant issues.

Orange County Opportunity Initiative

PLC is part of a coalition led by the Orange County Community Foundation to provide a variety of immigration related services to low income residents. PLC provides legal representation to human trafficking victims, victims of crime, Deferred Action for Childhood Arrivals (DACA) recipients and those in removal proceedings.

Medical Legal Partnership

In partnership with the St. Joseph Health System, Mission Hospital and Hoag Hospital, PLC seeks to improve the health of ill low-income clients by addressing legal issues such as domestic violence, guardianship, conservatorship, landlord/tenant, family law and immigration, which may have adverse health consequences.

Direct Agency Referrals for Legal Assistance

Legal service providers, non-profit organizations and government agencies refer indigent clients to PLC for placement with volunteer attorneys in the private bar. Clients' cases encompass a wide array of substantive matters including family law (e.g., dissolution, child custody and support, and paternity), children's issues (e.g., guardianship and adoptions), immigration (e.g., victim of crime based relief), consumer fraud (e.g., auto purchase, lease or repair, trade school student loans, home improvement contractor fraud), bankruptcy, wills and uninsured tort defense.

Community Organizations Legal Assistance Project (COLAP)

PLC provides free legal advice and representation to Orange County non-profit organizations, so they can meet their legal obligations and focus on providing services. PLC also assists low-income micro-entrepreneurs address issues which prevent them from successfully developing their small business. PLC particularly focuses on assisting child care providers navigate the legal and regulatory landscape.

Southeast Asian Legal Outreach Project (SEALOP)

Orange County is home to the largest Vietnamese community in the world outside of Vietnam. To assist the Vietnamese and other Asian communities in Orange County obtain meaningful access to the civil justice system, SEALOP provides the community with linguistically and culturally appropriate legal assistance.

Training and Mentoring

PLC provides training and mentoring of lawyers and law students, training of staff at non-profit organizations, law enforcement and other governmental agencies as well as know your rights presentations to community members.

VOLUNTEER!

PLC provides Orange County attorneys with the opportunity to help make sure that access to justice is available to all. PLC offers a variety of *pro bono* opportunities for potential volunteers, whether they are in large firms or small firms, in-house corporate counsel, sole practitioners, litigators or transactional lawyers, or law students. Volunteer opportunities include staffing clinics, individual case handling, co-counseling on impact litigation and speaking at training presentations. **For more information contact Pro Bono Directing Attorney Leigh Ferrin at: lferrin@publiclawcenter.org.**

The Public Law Center is a not-for-profit 501(c)(3) organization. To make a donation or learn more, go to www.publiclawcenter.org