

IN ARBITRATION

RICHARD LEMONDS,)	
)	
Claimant,)	
)	
v.)	Claim No.: 213764
)	
BENING AUTOMOTIVE GROUP, LLC)	
D/B/A BENING MAZDA,)	
)	
Respondent.)	

ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT

THIS ARBITRATOR, UPON CONSIDERATION AND REVIEW OF THE PROPOSED SETTLEMENT, RELEVANT DOCUMENTS, MOTION AND MEMORANDA AND THE PRESENTATION OF THE PARTIES, HEREBY ORDERS:

1. For purposes of this settlement only, pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure, the Arbitrator hereby certifies that this action may proceed for settlement purposes as a class action on behalf of a class consisting of:

ALL PERSONS WITH A MISSOURI POSTAL ADDRESS WHO PURCHASED A VEHICLE FROM BENING MAZDA BETWEEN JANUARY 10, 2014 TO NOVEMBER 7, 2019 WHO WERE CHARGED AN “ADMINISTRATION FEE” GREATER THAN \$0.00 ON THE BILL OF SALE AND WHERE THE BILL OF SALE, RETAIL INSTALLMENT CONTRACT, AND PRELIMINARY WORKSHEET DID NOT DISCLOSE THAT THE FEE IS NOT AN OFFICIAL FEE REQUIRED BY LAW AND MAY RESULT IN A PROFIT TO THE DEALER.

2. The Arbitrator finds that the numerosity, commonality, typicality and adequacy of representation requirements of Mo. R. Civ. P. 52.08 are satisfied, and a class action is an appropriate method for the fair and efficient resolution of the controversy and that common issues of fact and law predominate and make certification of a class for settlement efficient and appropriate.

3. Richard Lemonds is hereby appointed Class Representative.

4. Bryan E. Brody and Alexander J. Cornwell are hereby appointed Class Counsel.

5. The terms of the parties' Settlement Agreement are sufficiently fair, reasonable, and adequate to allow dissemination of the notice of the proposed Settlement Agreement to the Class Members. This determination permitting notice to the Class is not a finding that the Settlement Agreement is fair, reasonable, and adequate, but simply a determination that there is probable cause to submit the proposed settlement.

6. In the event that the settlement does not become Final (as that term is defined in the Settlement Agreement) in complete accordance with the terms of the Settlement Agreement, then this Order shall be rendered null and void and be vacated, and the Settlement Agreement shall be rendered null and void in accordance with the Settlement Agreement.

7. The Arbitrator grants preliminary approval of the Settlement Agreement as falling within the range of possible approval and meriting submission to the Settlement Class for its consideration, pursuant to Mo. R. Civ. P. 52.08.

8. Pursuant to Mo. R. Civ. P. 52.08, a Settlement Fairness Hearing shall be held before this Arbitrator on August 27, 2020 at 9:00 a.m. The Settlement Fairness Hearing will be conducted by telephone. To participate, call 314-926-0733 and input the PIN number of 37998#. At the Settlement Fairness Hearing, the Arbitrator will consider: (a) whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate; (b) whether a final judgment should be entered thereon; (c) whether Class Counsel fairly and adequately protected the interests of the Settlement Class; and (d) whether Class Counsel's application for attorneys' fees, costs, and expenses should be approved by the Arbitrator.

9. The Arbitrator approves the Notice of Settlement in the form of Exhibit B to the Motion for Preliminary Approval.

10. Defendant is hereby directed to cause to be mailed notice in the form of Exhibit B to the Motion for Preliminary Approval, in accordance with the provisions of the Settlement Agreement.

11. No later than ten (10) days prior to the Settlement Fairness Hearing, Defendant shall file with this Arbitrator, and serve on Class Counsel, an affidavit stating that the mailing of notice described in paragraph 10 above has been completed.

12. The Arbitrator finds that, under the circumstances, the mailing of notice described in paragraph 10 above constitutes the best practical notice of the Settlement Hearing, the Proposed Settlement, and other matters set forth in the Notices, and that such mailing of notice constitutes valid, due, and sufficient notice to all members of the Settlement Class, and comply fully with the requirements of Mo. R. Civ. P. 52.08, the Constitutions of the United States and the State of Missouri, the Settlement Class members' rights of due process and all other applicable law.

13. No later than ten (10) days prior to the Settlement Fairness Hearing, Class Counsel shall submit to this Arbitrator and serve Defendant with any application for reasonable attorneys' fees, costs, and expenses they may wish to make consistent with the Settlement Agreement.

14. All papers in opposition to the settlement shall be filed and served no later than thirty (30) days after notice was mailed.

15. Defendant shall pay all costs and expenses of mailing the notice and processing the claims.

16. Any person falling within the definition of the Settlement Class may, upon the person's request, be excluded from the settlement. Any such person must submit a request for

exclusion, postmarked no later than thirty (30) days after notice was mailed, to the Defendant's Counsel. The person making the request for exclusion must sign the request personally or by legal counsel, or may initial the opt-out paragraph on the notice document and return it to Defendant's Counsel. If opting out in a manner other than initialing and returning the notice document, a request for exclusion must include the (a) full name, (b) current address and (c) date and address when the person paid the administration fee to Defendant. The request for exclusion must also state specifically that the person requests exclusion from the Settlement Class in *Richard Lemonds v. Poage, Inc.*, Claim No. 213764. All persons who submit valid and timely requests for exclusion in the manner set forth in this paragraph shall have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein. All persons falling within the definition of the Settlement Class who do not request exclusion in the manner set forth herein shall be Settlement Class Members and shall be bound by the Settlement Agreement and the final judgment.

17. Any person falling within the definition of the Settlement Class who does not request exclusion in the manner set forth in paragraph 16 above can object to the proposed settlement by filing and serving a written objection. The person making the objection ("objector") must sign the objection personally or by legal counsel. An objection must: (1) state the (a) full name, (b) current address, and (c) date and address when the objector paid a Processing Fee to Defendant, and (2) state why the objector objects to the proposed settlement and any reasons supporting such position. Any party wishing to object must provide copies of any documents the objector intends to rely upon, the names and addresses of any witness who will appear at the hearing, and the name of any counsel representing the objector. Depositions of those posing objections may be taken so long as they are limited to topics relating to the objection. If an objector

intends to appear personally at the Settlement Fairness Hearing, the objector must include with the objection a notice of the objector's intention to appear at the hearing. Objections, along with any notices of intent to appear, must be postmarked no later than thirty (30) days after notice was mailed, and should be mailed to Class Counsel at the address listed in the notice. Class Counsel shall file any objections and notices of intent to appear with the Arbitrator prior to the _____, 2020 Settlement Fairness Hearing.

18. Only persons in the Settlement Class who have filed and served valid and timely notices of objection, in accordance with paragraph 17 above, shall be entitled to be heard at the Settlement Hearing.

19. Attorneys representing Settlement Class members in this lawsuit, other than Class Counsel herein, must file a Notice of Appearance with the Arbitrator, and send a copy to Class Counsel and the counsel for Defendant at the addresses listed in the notice. The Notice of Appearance must be filed no later than thirty (30) days after notice was mailed.

20. Any Settlement Class member who does not file and serve an objection in writing to the Settlement Agreement, to the entry of final judgment, or to the Class Counsel's application for fees, costs, and expenses, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

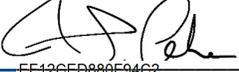
21. The Arbitrator may, for good cause, extend any of the deadlines set forth in this Order or adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

22. Pending final determination of whether the settlement embodied in the Settlement Agreement is to be approved, no member of the Settlement Class, either directly, representatively, derivatively, or in any other capacity, shall commence or prosecute any action or proceeding in any

court, arbitration, or tribunal asserting any of the claims described in the Settlement Agreement against Defendant.

SO ORDERED:

DATED: 6/3/2020

DocuSigned by:

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THE HONORABLE ROBERT S. COHEN,
ARBITRATOR