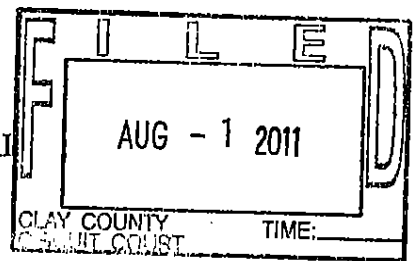


THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI  
AT LIBERTY



DANITA S. COUCH, et al.,  
Plaintiffs,

Case No. CV100-4332 CC

v.

Division 3

SMC LENDING, INC., et al.,  
Defendants.

**ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

WHEREAS, a class action petition was filed in the above-entitled action (the “Litigation”) on June 29, 2000; and

WHEREAS, on December 2002, the Court certified a litigation class in the Litigation, comprised of those persons who obtained a Missouri residential second mortgage loan from SMC Lending, Inc. on or after June 29, 1994, and which is particularly described in the Court’s *Order Certifying Plaintiff Class* (the “Litigation Class”); and

WHEREAS, notice of the Litigation was provided to the members of the Litigation Class and of their opportunity to opt out and exclude themselves from the Litigation Class; and

WHEREAS, only two (2) members of the Litigation Class, who were co-borrowers on the same loan, opted out of and excluded themselves from the Litigation Class; and

WHEREAS, Plaintiff Shirley D. Morrow (Plaintiff “Morrow”), is a member of the Litigation Class whose second mortgage loan from SMC Lending Inc. (“SMC”) was purchased by, assigned to, serviced by and/or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation) (“RFC”); and

WHEREAS, Plaintiff Morrow and RFC, on its own behalf and as attorney-in-fact for Homecomings Financial, LLC, GMAC Mortgage, LLC, the Home Loan Trust 1998-HI2, Home

Loan Trust 1998-HI4, Home Loan Trust 1999-HI1, Home Loan Trust 1999-HI4, Home Loan Trust 1999-HI6, Home Loan Trust 1999-HI8, Home Loan Trust 2000-HI1, Home Loan Trust 2000-HI2, Home Loan Trust 2000-HI3, Home Loan Trust 2000-HI4, Home Loan Trust 2000-HI5, Mortgage Asset-Backed Pass-Through Certificate Series 1998-KS1 Trust, Residential Funding Mortgage Securities II, Inc., Wilmington Trust Company, in its capacity as an assignee, holder, trustee, servicer and/or master servicer of the “SMC-RFC Loans” at issue, and JPMorgan Chase Bank, N.A., in its capacity as an assignee, holder, trustee, servicer and/or master servicer of the “SMC-RFC Loans” (collectively, the “Settling Defendants”) have entered into a “Settlement Agreement and Release” dated June 24, 2011 (the “Agreement”), which memorializes the negotiated and agreed-upon settlement of the Litigation as between Plaintiff Morrow and a proposed RFC Settlement Class, on one hand, and the Settling Defendants on the other, subject to the approval of the Court (“the Settlement”); and

WHEREAS, Plaintiff Morrow has filed a *Motion for Preliminary Approval of Class Action Settlement* with the Court.

NOW THEREFORE, upon careful consideration of the *Motion for Preliminary Approval of Class Action Settlement*, and after reviewing the Agreement, and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The terms of the Agreement, and the Settlement as provided therein, are approved preliminarily as fair, reasonable and adequate to the RFC Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 14 below.
2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

3. Plaintiff Morrow and RFC have executed the Agreement in order to settle and resolve the Litigation as between them and the proposed RFC Settlement Class, subject to approval of the Court.

4. Accordingly, for the purpose of a settlement in accordance with the Agreement, and upon review of the *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement*, this Court hereby preliminarily certifies the following class of persons as a settlement class (the "RFC Settlement Class"):

All persons who, on or after June 29, 1994, obtained a "Second Mortgage Loan," as defined in Mo.Rev.Stat. § 408.231.1, that was secured by a mortgage or a deed of trust on residential real property located in the State of Missouri, originated by SMC Lending, Inc., and purchased by, assigned to, serviced by and/or master serviced by Residential Funding Company, LLC (f/k/a "Residential Funding Corporation"), and who did not timely exercise their right and option to exclude themselves from the litigation class that the Court previously certified on December 11, 2002.

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court finds preliminarily as to the RFC Settlement Class that:

a. The RFC Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law or fact common to the RFC Settlement Class that predominate over questions affecting only individual members of the RFC Settlement Class;

c. The claims of Plaintiff Morrow are typical of those of the members of the RFC Settlement Class;

d. Plaintiff Morrow and Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the members of the RFC Settlement Class; and

e. Certification of the RFC Settlement Class as proposed is an appropriate

method for the fair and efficient adjudication of the controversies between the RFC Settlement Class and the Settling Defendants.

6. For the purpose of this preliminary approval, and for all matters relating to the Settlement and the Litigation, until further order of the Court, the Court appoints Plaintiff Morrow as Representative of the RFC Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the law firm Walters Bender Strohhahn & Vaughan, P.C., as Counsel for the RFC Settlement Class (“Plaintiffs’ Counsel” or “Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the RFC Settlement Class for purposes of evaluating the final certification of the RFC Settlement Class and the fairness and adequacy of the Settlement.

8. The Class Mail Notice, as set forth in Exhibit A to the Agreement, is hereby approved.

9. The Class Mail Notice in a form substantially the same as that set forth in Exhibit A to the Agreement shall be mailed by Class Counsel by first-class mail, postage prepaid, to all members of the RFC Settlement Class (as identified on Exhibit E of the Agreement) and any known Chapter 7 bankruptcy trustees of any member of the RFC Settlement Class for any Chapter 7 bankruptcy filed after origination of the class member’s loan. Such mailing shall be made within five (5) days of this Preliminary Approval Order.

10. The Agreement contemplates a notice methodology that (a) protects the interests of Plaintiff Morrow, the RFC Settlement Class, RFC, and the Settling Defendants, (b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the RFC Settlement Class of the pendency of the Litigation and proposed Settlement, the Agreement, and

the right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the notice methodology is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all applicable requirements of law, including, but not limited to, Mo. Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Class Mail Notice.

12. Any member of the RFC Settlement Class desiring exclusion from the RFC Settlement Class shall mail a request for exclusion (“Request for Exclusion”) to the Parties’ respective counsel. To be valid, the Request for Exclusion must be received on or before **September 2, 2011**. Such Request for Exclusion must be in writing and include: (a) the name, address, telephone number and the last four digits of the social security number of the class member seeking to opt out; (b) a statement that the class member and all other borrowers named on the class member’s promissory note are seeking exclusion; (c) the signature of each person who was a party to the promissory note made in connection with the class member’s loan, unless such person is deceased or legally incompetent, in which event the opt out submission shall be signed by said deceased or legally incompetent person’s personal representative or guardian; and (d) a reference to “Couch v. SMC Lending, Case No. 7CV 100-4332.” Any member of the RFC Settlement Class who does not properly and timely request exclusion from the RFC Settlement Class in full compliance with these requirements shall be included in the RFC Settlement Class and be bound by any judgment entered in this Action with respect to the Class.

13. Within a reasonable period after the deadline for submitting Requests for

Exclusion, but before the Final Approval Hearing, Class Counsel shall file with the Court a sworn statement listing those persons who submitted timely Requests for Exclusion. The originals of all Requests for Exclusion shall be retained by the Parties.

14. A hearing (the "Fairness Hearing") shall be held before the undersigned at **10:00 a.m. on October 19, 2011**, in Division 03 at the Clay County Courthouse, 11 S. Water, Liberty, MO 64068. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the RFC Settlement Class; (c) the application for an incentive award for the services rendered by Plaintiff Shirley D. Morrow; (d) the application for attorney's fees and for reimbursement of expenses by Class Counsel; and (e) other related matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the RFC Settlement Class.

15. To be considered at the Fairness Hearing, any person desiring to file an objection or other comment on the Settlement shall be required to file all such objections and comments and all supporting pleadings on or before **September 2, 2011**, with service upon Class Counsel and Settling Defendants' Counsel. In his/her objection, an objecting RFC Settlement Class Member must (a) set forth his/her full name, current address, and telephone number; (b) a statement of each objection asserted; (c) a detailed description of the facts underlying each objection; (d) any loan documents in the objector's possession or control and relied upon as a basis for the objection; (e) if the objector is represented by counsel, a detailed description of the legal authorities supporting each objection; (f) if the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts; (g) if the objector plans to call a witness or present other evidence at the hearing, the objector must

state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present; (h) a statement of whether the objector intends to appear at the hearing; (i) a copy of any exhibits which the objector may offer during the hearing; and (j) reference to "Couch v. SMC Lending, Case No. 7CV 100-4332." No Objection to or other comment concerning the Settlement shall be heard unless timely filed in accordance with the guidelines specified above and in the Agreement. Class Counsel and Settling Defendants' Counsel shall promptly furnish each other with copies of any and all objections or written requests for exclusion that come into their possession.

16. Any RFC Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall forever be barred from making any objection to the Settlement, including but not limited to, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

17. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorney's fees and reimbursement of expenses by Class Counsel, and any applications for the payment of services rendered by Plaintiff Morrow shall be filed with the Clerk of the Court on or before **October 5, 2011**. Any attorney hired by an RFC Settlement Class Member at the Class Member's expense for the purpose of making an objection shall file his or her entry of Appearance on or before **September 2, 2011**.

18. Any RFC Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Class Mail Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless, on or before **September 2, 2011**, unless such person has (a) filed with the

Clerk of the Court a notice of such person's intention to appear; and (b) served copies of such notice upon Class Counsel and Settling Defendants' Counsel.

19. Any RFC Settlement Class Member may intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Notice. No person shall be permitted to intervene unless, on or before **September 2, 2011**, such person has (a) filed with the Clerk of the Court a valid motion to intervene and (b) served copies of such notice upon Class Counsel and Settling Defendants' Counsel.

20. All other events contemplated under the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent herewith. Class Counsel and Settling Defendants' Counsel shall take such further actions as are required by the Agreement.

21. The Parties shall be authorized to make non-material changes to the Class Mail Notice so long as Class Counsel and Settling Defendants' Counsel agree and one of the Parties files a notice thereof with the Court prior to the Fairness Hearing.

22. All claims against and motions involving Defendant RFC (and the other Settling Defendants (and Released Persons as defined in the Agreement) in the Litigation are hereby stayed and suspended until further order of this Court, other than such as may be necessary to carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto.

23. The claims of Plaintiffs Danita S. Couch, Jack T. Chastain, Sr., David R. Beebe and Nancy J. Beebe, Plaintiff Morrow, the members of the RFC Settlement Class and/or the remaining members of the Litigation Class against any Defendant and/or person or entity other than Defendant RFC and the "Released Persons" as defined in the Agreement, are **not** stayed or



suspended by the Agreement, this Order, or otherwise. Only the "Released Claims" of the "Releasers" as against the "Released Persons," all as defined in the Agreement, are suspended and stayed.

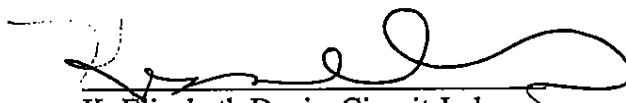
24. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and this Order and all Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, annulled and deemed "void" and/or "no longer equitable" for purposes of Mo. Rule 74.06, as provided in and subject to paragraph 13 of the Agreement.

25. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion, (ii) the truth or relevance of any fact alleged by Plaintiffs, (iii) the existence of any class alleged by Plaintiffs, (iv) the propriety of class certification if the Litigation were to be litigated rather than settled, (v) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (vi) that the consideration to be given to RFC Settlement Class Members hereunder represents the amount which could be or would have been recovered by any such persons after trial; or (vii) the propriety of class certification in any other proceeding or action. Entering into or carrying out

the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of the Settling Defendants, and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary in a proceeding to enforce the terms of this Order and the Agreement; provided, however, that this Order and the Agreement may be filed by a Settling Defendant in any action filed against or by RFC or any Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim. The Settling Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

IT IS SO ORDERED

Date: August 1, 2011



K. Elizabeth Davis, Circuit Judge