

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE

DEANTHONY THOMAS AND SUSAN  
JELINKE-THOMAS, et al.,

Plaintiffs,

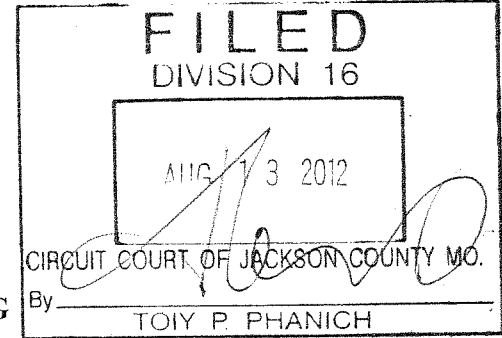
vs.

U.S. BANK NATIONAL ASSOCIATION,  
et al.,

Defendants.

Case No. 1216-cv20561

Division 16



**ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs James C. Baker and Jill S. Baker, David R. Beebe and Nancy J. Beebe, Jack T. Chastain, Sr., Danita S. Couch, Jeffrey A. Cox and Michelle A. Cox, Dana S. and Melanie D. Hall, Steven M. Rich, Phillip M. and Sharon K. Schrier, William L. Springer and Linda A. Springer, DeAnthony Thomas and Susan Jelinke-Thomas, and Ted Varns and Raye Ann Varns (collectively, the "Named Plaintiffs") commenced the above-captioned civil action (the "Litigation") against U.S. Bank National Association and U.S. Bank National Association ND, as the purchasers, assignees, owners, holders, and/or servicers of the "U.S. Bank Direct Loans" as defined herein; and

WHEREAS, the Named Plaintiffs are asserting claims against Defendants U.S. Bank National Association and U.S. Bank National Association ND (the "Settling Defendants") in the Litigation (the "Claims"), which are based on certain loan fees and interest payments that the Named Plaintiffs allege the Settling Defendants directly or indirectly charged, contracted for or received in violation of the Missouri Second Mortgage Loans Act ("MSMLA"), §§ 408.231-408.241 RSMo, in connection with approximately 1,500 subordinate lien (second) mortgage loans originated by a lender other than U.S. Bank National Association or U.S. Bank National

Association ND and secured by a deed of trust on residential real property located in Missouri that the Settling Defendants purchased, received an assignment of or otherwise acquired or serviced (the “U.S. Bank Direct Loans”); and

WHEREAS, the Named Plaintiffs are asserting the Claims for themselves and for a similarly-situated class of consumer borrowers (the “U.S. Bank Direct Loans Settlement Class”); and

WHEREAS, the Named Plaintiffs are also plaintiffs and members of the putative and certified classes of borrowers in: (1) *Baker v. Century Financial Group, Inc.*, Case No. CV100-4294, filed June 28, 2000 (Cir. Ct. Clay County, Missouri); (2) *Beaver v. First Consumers Mortgage, Inc.*, Case No. 00-CV-215097-01, filed June 23, 2000 (Cir. Ct. Jackson County, Missouri) (consolidated with *Beaver v. First Consumers Mortgage, Inc.*, Case No. 03-CV-213643, filed May 28, 2003 (Cir. Ct. Jackson County, Missouri)); (3) *Couch v. SMC Lending, Inc.*, Case No. 7CV-100-4332, filed June 29, 2000 (Cir. Ct. Clay County, Missouri); (4) *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263, filed June 27, 2000 (Cir. Ct. Clay County, Missouri), *removed*, Case No. 10-0189-CV-W-ODS (W.D. Mo.); (5) *Hall v. American West Financial*, Case No. 00CV218553-01, filed July 28, 2000 (Cir. Ct. Jackson County, Missouri); and (6) *Thomas v. U.S. Bank Nat. Ass’n, ND*, Case No. 04-CV-83549-01, filed June 2, 2004 (Cir. Ct. Platte County, Missouri), *removed*, Case No. 11-6013-CV-SJ-SOW (W.D. Mo.) (the “Missouri Cases”); and

WHEREAS, the Named Plaintiffs and other plaintiff-borrowers in the Missouri Cases are asserting claims against the lenders, assignees and/or servicers of numerous subordinate lien (second) mortgage loans secured by a mortgage or a deed of trust on residential real property located in Missouri including, without limitation, claims against one or both of the Settling

Defendants, based on the alleged violation of the MSMLA in connection with the U.S. Bank Direct Loans; and

WHEREAS, the Named Plaintiffs and the Settling Defendants, as the purchasers, assignees, owners, holders, and/or servicers of the “U.S. Bank Direct Loans,” have entered into a “Settlement and Release Agreement” dated August 9, 2012 (the “Agreement”), which memorializes a negotiated and agreed-upon settlement of the Litigation and Claims as between the Named Plaintiffs and the proposed U.S. Bank Direct Loans Settlement Class, on one hand, and the Settling Defendants, on the other hand, subject to the approval of the Court (“the Settlement”); and

WHEREAS, the Named Plaintiffs, with the agreement and consent of the Settling Defendants, have commenced the Litigation against the Settling Defendants in order to efficiently resolve the Claims against the Settling Defendants by consolidating the Claims in a single proceeding; and

WHEREAS, the Named Plaintiffs have filed a *Motion for Preliminary Approval of Class Action Settlement* with the Court, which asks the Court to preliminarily approve the proposed settlement.

NOW THEREFORE, upon careful consideration of the Named Plaintiffs’ *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:

**A. Preliminary Class Certification**

1. The Agreement and its definitions are incorporated into this Order (with capitalized terms as set forth in the Agreement).

2. The Named Plaintiffs and the Settling Defendants have executed the Agreement in order to settle and resolve the Litigation and Claims as between and among the Named Plaintiffs, the proposed U.S. Bank Direct Loans Settlement Class, and the Settling Defendants, subject to approval of the Court.

3. The terms of the Agreement, and the Settlement as provided therein, are approved preliminarily as fair, reasonable and adequate to the U.S. Bank Direct Loans Settlement Class as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 20 below.

4. 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*, the Court hereby preliminarily certifies the following class of persons as a settlement class (i.e., the "U.S. Bank Direct Loans Settlement Class") pursuant to Mo. Rule 52.08 as fair, reasonable and adequate:

All persons who, on or after May 16, 1994, obtained a Missouri Second Mortgage Loan that was originated by a lender other than U.S. Bank National Association ND or U.S. Bank National Association, secured by a mortgage or a deed of trust on residential real property located in the state of Missouri, and purchased by, assigned to, or otherwise acquired or serviced by U.S. Bank National Association ND or U.S. Bank National Association, and who did not timely exclude themselves from a litigation class previously certified in any of the following cases:

- *Baker v. Century Financial Group, Inc.*, Case No. CV100-4294, filed June 28, 2000 (Cir. Ct. Clay County, Missouri)
- *Beaver v. First Consumers Mortgage, Inc.*, Case No. 00-CV-215097-01, filed June 23, 2000 (Cir. Ct. Jackson County, Missouri) (consolidated with *Beaver v. First Consumers Mortgage, Inc.*, Case No. 03-CV-213643, filed May 28, 2003 (Cir. Ct. Jackson County, Missouri))
- *Couch v. SMC Lending, Inc.*, Case No. 7CV-100-4332, filed June 29, 2000 (Cir. Ct. Clay County, Missouri)

- *Gilmor v. Preferred Credit Corporation*, Case No. CV100-4263, filed June 27, 2000 (Cir. Ct. Clay County, Missouri), *removed*, Case No. 10-0189-CV-W-ODS (W.D. Mo.)
- *Hall v. American West Financial*, Case No. 00CV218553-01, filed July 28, 2000 (Cir. Ct. Jackson County, Missouri)

If any of these persons have died, became a debtor in a bankruptcy case under Chapter 7 or Chapter 13 after obtaining his or her U.S. Bank Direct Loan, or in some other way voluntarily or involuntarily transferred his or her rights under a U.S. Bank Direct Loan, said person's heir, representative, bankruptcy trustee, successor or assign also shall be deemed a member of the U.S. Bank Direct Loans Settlement Class.

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court, finds preliminarily as to the proposed U.S. Bank Direct Loans Settlement Class that:

- a. The U.S. Bank Direct Loans Settlement Class is comprised of over 2,400 members who obtained approximately 1,500 loans and is so numerous that joinder of all members is impracticable;
- b. There are questions of law and fact common to the Class, including, but not limited to, questions related to the application of the MSMLA to the U.S. Bank Direct Loans, the practices and operations of the parties involved with the origination, sale, conveyance, exchange and collection of the U.S. Bank Direct Loans, and the measure of damages;
- c. The Claims arise from the same conduct and course of conduct and are typical of the claims of the U.S. Bank Direct Loans Settlement Class for which the Parties seek certification;
- d. There are no apparent conflicts of interest between the Named Plaintiffs and the U.S. Bank Direct Loans Settlement Class or among the members of the U.S. Bank Direct Loans Settlement Class, and the Named Plaintiffs and their counsel will

fairly and adequately protect the interests of the U.S. Bank Direct Loans Settlement Class.

The Court further finds that:

e. The questions of law or fact which are common to the members of the U.S. Bank Direct Loans Settlement Class wholly predominate over the questions affecting only individual members; and

f. Certification of the U.S. Bank Direct Loans Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the U.S. Bank Direct Loans Settlement Class and the Settling Defendants with respect to the Claims, without prejudice to rights and claims of the Named Plaintiffs and the members of the U.S. Bank Direct Loans Settlement Class in the Missouri Cases against any persons, associations and entities other than the Settling Defendants and other "Released Persons." The Named Plaintiffs seek to remedy over 1,500 substantively identical legal grievances and certification of the U.S. Bank Direct Loans Settlement Class and the class-wide resolution of the Claims in the Litigation via the Settlement will promote judicial economy and uniformity of result without undue dilution of procedural safeguards for the members of the U.S. Bank Direct Loans Settlement Class or the Settling Defendants.

6. For purposes of this preliminary approval, and for all matters relating to the Settlement and Litigation, and until further order of the Court, the Named Plaintiffs are appointed as Representatives of the U.S. Bank Direct Loans Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, and J. Michael Vaughan of the law firm Walters Bender Strohbehn & Vaughan, P.C. are appointed as Counsel for the U.S. Bank Direct Loans

Settlement Class (“Class Counsel”).

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

**B. Class Notice and Notice Plan**

8. The Class Mail Notice attached as Exhibit A to the Agreement, the form Claim Form attached as Exhibit B to the Agreement, and the Publication Notice attached as Exhibit H to the Agreement, are hereby approved.

9. Class Counsel shall mail the Class Mail Notice in a form substantially the same as that attached as Exhibit A to the Agreement by first-class mail, postage prepaid, to all members of the U.S. Bank Direct Loans Settlement Class, as identified on Exhibit F of the Agreement. Class Counsel shall prepare a Claim Form using the form attached as Exhibit B to the Agreement for each U.S. Bank Direct Loan pursuant to Section 8(a) of the Agreement, which shall be included with the Class Mail Notice sent to the member(s) of the U.S. Bank Direct Loans Settlement Class for that loan. Such mailing shall be made within five (5) days of the entry of this Preliminary Approval Order.

10. The Settling Defendants’ Counsel shall arrange for the publication of the Publication Notice as attached as Exhibit H to the Agreement in one **Sunday** edition, or if the paper does not have a Sunday edition, in the **Saturday** edition, of *The Kansas City Star*, *The St. Louis Post Dispatch*, *The Springfield News-Leader*, *The St. Joseph News-Press*, *The Cape Girardeau Southeast Missourian*, *The Columbia Tribune*, *The Rolla Daily News*, *The Hannibal Courier-Post*, *The Kirksville Daily Express* and *The Joplin Globe*. The publication shall be of

the size and style of the Publication Notice attached as Exhibit H to the Agreement and placed in the paper where legal notices typically appear. Such publication shall occur as soon as practicable after the entry of this Preliminary Approval Order and the Settling Defendants shall pay all costs of publication in addition to the Gross Settlement Amount. Any member of the U.S. Bank Direct Loans Settlement Class who inquires concerning the Settlement in response to the Publication Notice shall be provided with a Class Notice and Claim Form.

11. The Class Mail Notice and Publication Notice contain sufficient information which a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out of or remain a member of the U.S. Bank Direct Loans Settlement Class and be bound by a final judgment, fairly apprises the members of U.S. Bank Direct Loans Settlement Class of the terms and conditions of the Settlement, the formula for computing individual recoveries and an estimated amount of or range of the U.S. Bank Direct Loans Settlement Class Member Payments, the options that are open to the members of the U.S. Bank Direct Loans Settlement Class in connection with the proceedings and apprises the members of the U.S. Bank Direct Loans Settlement Class as to how they may obtain additional information from Class Counsel. In addition, the manner in which the Class Mail Notice and Publication Notice will be disseminated and published ensures that notice of the Litigation and Settlement will reach most if not all of the members of the U.S. Bank Direct Loans Settlement Class and is reasonable. For these and other reasons, the Court finds that the Agreement contemplates a method of notice that (a) protects the interests of the Named Plaintiffs, the U.S. Bank Direct Loans Settlement Class, and the Settling Defendants, (b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the U.S. Bank Direct Loans Settlement Class of the pendency of the Litigation and proposed Settlement, of the Agreement, and of their



right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the proposed method of notice 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.

12. Prior to the Fairness Hearing:

(a) 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; and

(b) the Settling Defendants' Counsel shall serve and file a sworn statement of a person with knowledge evidencing compliance with the provisions of this Order concerning publication of the Publication Notice.

C. **The Claim Form**

13. The Court has reviewed the Claim Form attached as Exhibit B to the Agreement carefully. A Claim Form completed in accordance with Section 8(a) of the Agreement for each U.S. Bank Direct Loan will be mailed to the members of the U.S. Bank Direct Loans Settlement Class for that loan, along with the Class Mail Notice. The Claim Form is straightforward and is readily understood by the persons who will be required to sign and return it in order to obtain a recovery under the Settlement. Because it must be executed under penalty of perjury, the Claim Form provides adequate due process protections to the Settling Defendants, as well as to the members of the U.S. Bank Direct Loans Settlement Class, and will allow the Parties to accurately and efficiently review the submitted Claims. Accordingly, the Claim Form is approved for use as part of the Settlement.

14. The Court has carefully reviewed the claims process and procedures set forth in the Agreement. In order to be entitled to receive any compensation under the Agreement and in order for their Claim to be a Valid Claim, U.S. Bank Direct Loans Settlement Class Members must submit their Claim Forms to Class Counsel on or before **December 17, 2012** as provided in the Agreement. The validity of a Claim, the claims dispute resolution procedures, and the distribution and payment process described in the Agreement (collectively, the “Claims Process”) shall be governed by the Agreement. The Court finds that the Claims Process as described in the Agreement provides adequate due process protections to the Parties and the U.S. Bank Direct Loans Settlement Class Members and is appropriate, fair, adequate and reasonable.

**D. Settlement Fund: Approval, Establishment and Administration**

15. The Settlement Fund to be funded by the Settling Defendants pursuant to Section 4(b) of the Agreement is hereby approved and Class Counsel is authorized to establish the Settlement Fund pursuant to this Order and the terms of this Agreement. Class Counsel is hereby appointed Settlement Fund Administrator as defined in the Agreement and shall perform all settlement administration duties as described in the Agreement and this Order.

16. All taxes, costs and expenses associated with the Settlement Fund and its administration shall be paid by Class Counsel.

**E. Class Member Rights (Exclusion, Objection, Appearance, and Intervention) and Fairness Hearing**

17. Any member of the U.S. Bank Direct Loans Settlement Class desiring exclusion from the U.S. Bank Direct Loans 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 **October 15, 2012**. 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 in some other way has voluntarily or involuntarily transferred his or her rights under the U.S. Bank Direct Loan, in which event the Request for Exclusion shall be signed by said person's heir, representative, successor or assign; and (d) a reference to "Thomas v. U.S. Bank National Association, Case No. 1216-cv20561." If the Request for Exclusion is signed by the heir, representative, successor or assign, sufficient documentation showing his or her authority to sign must be received on or before **October 15, 2012**.

18. Any member of the U.S. Bank Direct Loans Settlement Class who does not properly and timely request to be excluded from the U.S. Bank Direct Loans Settlement Class in full compliance with these requirements shall be included in the U.S. Bank Direct Loans Settlement Class and shall be bound by any judgment entered in this lawsuit with respect to said Class.

19. Within a reasonable period after the deadline for submitting Requests for Exclusion, but before the Fairness Hearing, Class Counsel shall file with the Court a sworn statement to identify those persons, if any, who timely submitted a Request for Exclusion. The originals of all Requests for Exclusion shall be retained by the Parties. Class Counsel and Settling Defendants' Counsel shall promptly furnish each other with copies of any Requests for Exclusion that come into their possession.

20. A hearing (the "Fairness Hearing") shall be held at **01:15 p.m. on November 16, 2012**, in Division 16 at the Jackson County Courthouse, 308 W. Kansas, Independence Missouri

64050. 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 U.S. Bank Direct Loans Settlement Class; (c) the application for incentive awards for the services rendered by Named Plaintiffs; (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 U.S. Bank Direct Loans Settlement Class.

21. To be considered at the Fairness Hearing, any U.S. Bank Direct Loans Settlement Class Member desiring to file an objection or other comment on the Settlement shall be required to file any such objections or comments and all supporting pleadings with the Court on or before **October 15, 2012**, with service upon Class Counsel and Settling Defendants' Counsel as required by the Missouri Rules of Civil Procedure. The objection of any U.S. Bank Direct Loans Settlement Class Member must be in writing and must specifically include the following: (a) the name, address, and telephone number of the Class Member(s) filing the objection; (b) a statement of each objection asserted; (c) a detailed description of the facts underlying each objection; (d) any loan documents in the possession or control of the objector and relied upon by the objector 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 “Thomas v. U.S. Bank National Association, Case No. 1216-cv20561.”

22. No objection to or comment concerning the Settlement shall be heard unless timely filed and served as provided herein. Class Counsel and Settling Defendants’ Counsel shall promptly furnish each other with copies of any written objections that come into their possession.

23. Any attorney retained by any objector for the purpose of appearing and/or making an objection shall file his or her entry of appearance at the objector’s expense on or before **October 15, 2012**, with service on Class Counsel and Settling Defendants’ Counsel per the Missouri Rules of Civil Procedure.

24. Any objector 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 without limitation, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

25. Any U.S. Bank Direct Loans 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 **October 15, 2012**, 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 as required by the Missouri Rules of Civil Procedure.

26. Any U.S. Bank Direct Loans Settlement Class Member may seek to 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 **October 15, 2012**, 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 as required by the Missouri Rules of Civil Procedure.

**F. Miscellaneous Matters**

27. 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 the Named Plaintiffs shall be filed with the Clerk of the Court on or before **November 2, 2012** with a service copy to Settling Defendants' Counsel.

28. 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 with this Order. Class Counsel and Settling Defendants' Counsel shall take such further actions as are required by the Agreement.

29. The Parties shall be authorized to make non-material changes to the Class Mail Notice, Claim Form and Publication 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. Neither the insertion of dates, nor the correction of typographical or grammatical errors, nor the insertion of data on the approved form of the Claim Form as required by Section 8(a) of the Agreement shall be deemed a change to the Class Mail Notice, Claim Form, or Publication Notice.

30. All claims against and motions involving the Settling Defendants in the Litigation

are hereby stayed and suspended until further order of this Court, other than such as may be necessary to effectuate the Settlement and carry out the terms and conditions of the Agreement or the responsibilities related or incidental thereto.

31. Although final as to the “Released Claims” against the Settling Defendants and other “Released Persons,” the Settlement does not constitute a full and final settlement of all the claims arising from the Missouri Second Mortgage Loans made to the Named Plaintiffs and the members of the U.S. Bank Direct Loans Settlement Class. The dismissal of the Litigation and the individual and class claims asserted herein shall not in any way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of any claims of the Named Plaintiffs or the U.S. Bank Direct Loans Settlement Class Members against any person, association or entity, except for the “Released Claims” against the “Released Persons” as defined in the Agreement.

32. 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 other Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” or set aside for a reason that otherwise “justifies relief” for purposes of Mo. Rule 74.06 or Fed.R.Civ.P. 60(b) as provided in and subject to Section 17 of the Agreement.

33. 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

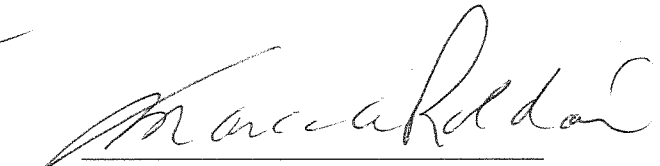
Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, 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 or the Missouri Cases 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 Missouri Cases, the Litigation or any other litigation; (vi) that the consideration to be given to U.S. Bank Direct Loans Settlement Class Members pursuant to the Settlement 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 this action or any other lawsuit or proceeding. 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 the Litigation or any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary (a) to enforce the terms of this Order, and the Agreement; or (b) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other U.S. Bank Direct Loans Settlement Class Members including, without limitation, the payments, attorney's fees, costs, or other relief as provided in Section 19 of the Agreement; provided, however, that this Order and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be filed by a Released Person in any action filed against or by the Settling Defendants or any other Released Person to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar

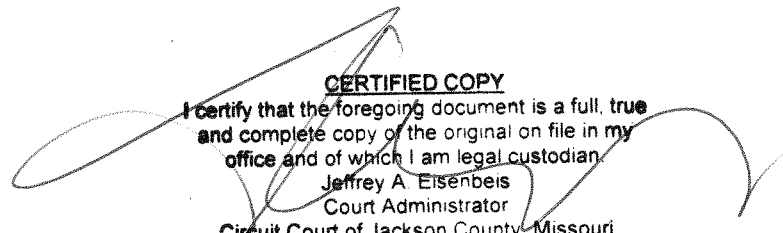


or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim, and provided, further, that this Order and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be filed by a Released Person in any action filed against or by the Settling Defendants or any other Released Person to support a claim for insurance coverage relating to the Agreement. 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 13, 2012

  
\_\_\_\_\_  
Marco A. Roldan, Circuit Court Judge

  
**CERTIFIED COPY**  
I certify that the foregoing document is a full, true and complete copy of the original on file in my office and of which I am legal custodian.  
Jeffrey A. Eisenbeis  
Court Administrator  
Circuit Court of Jackson County, Missouri  
By \_\_\_\_\_ Deputy