

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

JACK L. AND HILDA M. BEAVER,
et al.,

Plaintiffs,

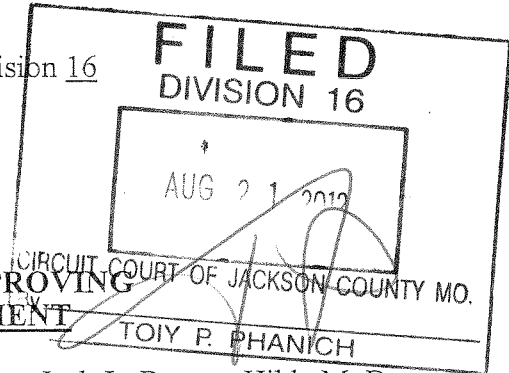
vs.

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

Defendants.

Case No. 1216-CV21345

Division 16



**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, Plaintiffs James C. Baker and Jill S. Baker, Jack L. Beaver, Hilda M. Beaver, David R. Beebe and Nancy J. Beebe, Jack T. Chastain, Sr., Danita S. Couch, Jeffrey A. Cox and Michelle A. Cox, Daniel Emily and Sandra Emily, Mark R. Fisher, Michael P. Gilmor and Shellie Gilmor, Dana S. and Melanie D. Hall, Rachelle Hamrick, Michael E. Harris and Lois A. Harris, Bruce W. James and Mary A. James, Daniel R. Jensen and Wanda D. Jensen, William T. Jones and Marion Jones, Thomas Kartman and Maritza Kartman, Douglas A. Kronos and Tammi S. Kronos, Terry M. Lovett f/k/a Terry M. Brooks, Leo E. Parvin, Jr., John R. Rumans and Jeanne E. Rumans, Philip M. Schrier and Sharon K. Schrier, Samuel Smith, Jr., William L. Springer and Linda A. Springer, DeAnthony Thomas and Susan Jelinke-Thomas, Jason C. Thrasher and Janet L. Thrasher, Ted Varns and Raye Ann Varns, Michael M. Wolfe and Vivian C. Wolfe, and James G. Wong (collectively, the “Named Plaintiffs”) commenced the above-captioned civil action (the “Litigation”) against U.S. Bank National Association, Wilmington Trust Company, and the other Trust Parties as the purchasers, assignees, owners, holders, and/or trustees of the “Trust Loans” as defined herein; and

WHEREAS, the Named Plaintiffs are asserting claims against Defendants U.S. Bank National Association, Wilmington Trust Company, and the other Trust Parties (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 1,800 subordinate lien (second) mortgage loans secured by a deed of trust on residential real property located in Missouri that were purchased by, assigned to or otherwise acquired by a Trust or a Trust Party (the “Trust Loans”); and

WHEREAS, the Named Plaintiffs are asserting the Claims for themselves and for a similarly-situated class of consumer borrowers (the “Trust 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) *Couch v. SMC Lending, Inc.*, Case No. 7CV-100-4332, filed June 29, 2000 (Cir. Ct. Clay County, Missouri); (3) *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.); (4) *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)); (5) *Scherich (Smith) v. Premier Associates Mortgage Co.*, Case No. 01-CV-201263, filed January 12, 2001 (Cir. Ct. Jackson County, Missouri) (consolidated with *Scherich (Smith) v. Premier Associates Mortgage Co.*, Case No. 03-CV-216423, filed June 23, 2003 (Cir. Ct. Jackson County, Missouri)); (6) *Hall*

v. American West Financial, Case No. 00CV218553-01, filed July 28, 2000 (Cir. Ct. Jackson County, Missouri); (7) *Schwartz (now Wong) v. Bann-Cor Mortgage*, Case No. 00-CV-22639, filed October 31, 2000 (Cir. Ct. Jackson County, Missouri), *removed*, Case No. 10- 01038-CV-FJG (W.D. Mo.); and (8) *Thomas v. U.S. Bank Nat. Ass'n, ND*, Case No. 04-CV-83549-01, filed June 02, 2004 (Cir. Ct. Platte County, Missouri), *removed and currently pending before* the United States District Court for the Western District of Missouri as Case No. 11-6013-CV-SJ-SOW (W.D. Mo.) (collectively referred to as 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 any one or more of the Settling Defendants, based on the alleged violation of the MSMLA in connection with the Trust Loans; and

WHEREAS, the Named Plaintiffs and U.S. Bank National Association and Wilmington Trust Company, each in its Representative Capacities respectively as trustees on behalf of each of the Trust Parties as set forth on the signature pages of the Agreement have entered into a “Settlement and Release Agreement” dated August 20, 2012 (the “Agreement”), which memorializes a negotiated and agreed-upon settlement of the Litigation and Claims as between the Named Plaintiffs and the proposed Trust 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 Trust 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 Trust 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 "Trust

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 purchased by, assigned to, or otherwise acquired by a Trust or any one of the Trust Parties identified on **Schedule 2** of the Agreement, 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);
- *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.);
- *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));
- *Scherich (Smith) v. Premier Associates Mortgage Co.*, Case No. 01-CV-201263, filed January 12, 2001 (Cir. Ct. Jackson County, Missouri) (consolidated with *Scherich (Smith) v. Premier Mortgage Associates*, Case No. 03-CV-216423, filed June 23, 2003 (Cir. Ct. Jackson County, Missouri));
- *Hall v. American West Financial*, Case No. 00CV218553-01, filed July 28, 2000 (Cir. Ct. Jackson County, Missouri);
- *Schwartz (now Wong) v. Bann-Cor Mortgage*, Case No. 00-CV-22639, filed October 31, 2000 (Cir. Ct. Jackson County, Missouri), *removed*, Case No. 10-01038-CV-FAG (W.D. Mo.); and
- *Thomas v. U.S. Bank Nat. Ass’n, ND*, Case No. 04-CV-83549-01, filed June 02, 2004 (Cir. Ct. Platte County, Missouri), *removed and currently pending before* the United States District Court for the Western District of Missouri as Case No. 11-6013-CV-SJ-SOW (W.D. Mo.).

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 Trust Loan, or in some other way voluntarily or involuntarily transferred his or her rights under a Trust Loan, said person’s heir, representative, bankruptcy trustee, successor or assign also shall be deemed a member of the Trust Loans Settlement Class.

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

a. The Trust Loans Settlement Class is comprised of over 3,000 members who obtained over 1,800 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 Trust Loans, the practices and operations of the parties involved with the origination, sale, conveyance, exchange and collection of the Trust 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 Trust Loans Settlement Class for which the Parties seek certification;

d. There are no apparent conflicts of interest between the Named Plaintiffs and the Trust Loans Settlement Class or among the members of the Trust Loans Settlement Class, and the Named Plaintiffs and their counsel will fairly and adequately protect the interests of the Trust Loans Settlement Class.

The Court further finds that:

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

f. Certification of the Trust Loans Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the Trust 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 Trust 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 1,800 substantively identical legal grievances and certification of the Trust 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 Trust 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 Trust Loans Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, and J. Michael Vaughan of the law firm Walters Bender Strohhahn & Vaughan, P.C. are appointed as Counsel for the Trust Loans Settlement Class (“Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the Trust Loans Settlement Class for purposes of evaluating the final certification of the Trust 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 I 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 Trust 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 Trust Loan pursuant to Section 9(a) of the Agreement, which shall be included with the Class Mail Notice sent to the member(s) of the Trust 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 Trust Parties' Counsel shall arrange for the publication of the Publication Notice as attached as Exhibit J 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 I 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 Trust 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 Trust Loans Settlement Class and be bound by a final judgment, fairly apprises the members of Trust 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 Trust Loans Settlement Class Member Payments, the options

that are open to the members of the Trust Loans Settlement Class in connection with the proceedings and apprises the members of the Trust 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 Trust 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 Trust Loans Settlement Class, and the Settling Defendants, (b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the Trust 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;

(b) the Trust Parties' 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; and

(c) the Trust Parties' Counsel shall serve and file a sworn statement of a

person with knowledge evidencing compliance with Section 8 of the Agreement concerning the Trust Investors notice and the entry of the Trustee Approval Order.

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 9(a) of the Agreement for each Trust Loan will be mailed to the members of the Trust 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 Trust 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, Trust Loans Settlement Class Members must submit a Valid Claim to Class Counsel on or before **December 20, 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 Trust Loans Settlement Class Members and is appropriate, fair, adequate and reasonable.

D. Settlement Fund 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 the 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 Trust Loans Settlement Class desiring exclusion from the Trust 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 22, 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 Trust 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 “Beaver v. U.S. Bank National Association, Case No. 1216-CV21345.” 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 22, 2012**.

18. Any member of the Trust Loans Settlement Class who does not properly and timely request to be excluded from the Trust Loans Settlement Class in full compliance with

these requirements shall be included in the Trust 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 Trust Parties' 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 **8:30 a.m. on November 26 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 Trust 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 Trust Loans Settlement Class.

21. To be considered at the Fairness Hearing, any Trust 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 22, 2012**, with service upon Class Counsel and Trust Parties' Counsel as required by the Missouri Rules of Civil Procedure. The objection of any Trust 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 “Beaver v. U.S. Bank National Association, Case No. 1216-CV21345.”

22. No objection to or comment concerning the Settlement shall be heard unless timely filed and served as provided herein. Class Counsel and Trust Parties’ 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 22, 2012**, with service on Class Counsel and Trust Parties’ 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 Trust 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 22, 2012**, 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 Trust Parties' Counsel as required by the Missouri Rules of Civil Procedure.

26. Any Trust 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 22, 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 Trust Parties' 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 12, 2012** with a service copy to Trust Parties' 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 Trust Parties' 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 Trust Parties' 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 9(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 Trust 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 Trust 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

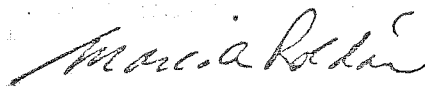
Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and this Order and all other Orders issued pursuant to the Settlement 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 the Missouri Cases, the Litigation or any other litigation; (vi) that the consideration to be given to Trust 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

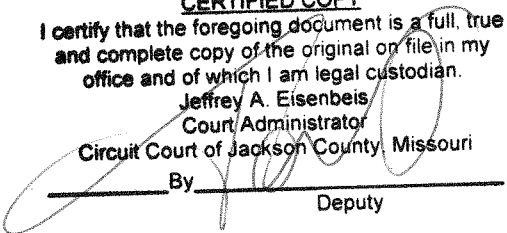
Litigation or any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary (a) to enforce the terms of this Order, and the Agreement; or (b) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other Trust Loans Settlement Class Members including, without limitation, the payments, attorney's fees, costs, or other relief as provided in Section 20 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 and other Released Persons 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 21, 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