

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI
AT LIBERTY

JAMES AND JILL BAKER, et al.,

Plaintiffs,

v.

CENTURY FINANCIAL GROUP, INC., et
al.,

Defendants.

Case No. CV100-4294 CC

Division 3

**ORDER AND JUDGMENT FINALLY APPROVING CLASS ACTION
SETTLEMENT AND CERTIFYING A CLASS FOR SETTLEMENT PURPOSES**

Upon careful review and consideration of the Parties' Settlement and Release Agreement dated September 19, 2013 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on **October 29, 2013**, the memoranda filed with this Court, and all other filings in connection with the Parties' settlement as memorialized in the Agreement (the "Settlement"); and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Order incorporates and makes the following a part hereof:

a. The Agreement, filed with the above Court on or about September 24, 2013; and

b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of "Net Distributable Settlement Fund," **filed under seal**); (ii) Exhibit A (Proposed Class Mail Notice); (iii) Exhibit B (Proposed Order Preliminarily Approving the Class Action Settlement); (iv) Exhibit C (Proposed Final Approval Order

and Judgment); and (v) Exhibit D (list of members of the TMS Settlement Class, **filed under seal**).

Unless otherwise provided herein, all capitalized terms in this Order shall have the same meaning as those terms in the Agreement.

2. **Jurisdiction**. Because adequate notice was disseminated and all potential members of the TMS Settlement Class (as defined below) were given notice of and an opportunity to opt out of the Settlement (as found below), the Court has personal jurisdiction over all members of the TMS Settlement Class. The Court has subject matter jurisdiction over the Litigation, including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the TMS Settlement Class, and to dismiss the Litigation against the Settling Defendants with prejudice.

3. **Final Class Certification**. The TMS Settlement Class, which this Court previously certified preliminarily, is hereby finally certified for settlement purposes pursuant to Mo. Rule 52.08, the Court finding for purposes of settlement that the TMS Settlement Class fully satisfies all of the applicable requirements of Mo. Rule 52.08 and due process. The TMS Settlement Class is defined as follows:

All persons who, on or after June 28, 1994, obtained a "Second Mortgage Loan," as defined in § 408.231.1 RSMo, that was secured by a mortgage or a deed of trust on residential real property situated in the state of Missouri, originated by Century Financial Group, Inc., and purchased by and/or assigned to TMS Mortgage, Inc. (d/b/a "The Money Store") or Integrated Capital Group and who did not timely exercise their right and option to exclude themselves from the litigation class that the Court previously certified on January 2, 2003.

No members of the TMS Settlement Class timely requested to be excluded from or "opted out" of the TMS Settlement Class.

4. **Adequacy of Representation.** There are no apparent conflicts of interest between the Named Plaintiffs and the TMS Settlement Class, or among the members of the TMS Settlement Class. Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the TMS Settlement Class. Accordingly, the Named Plaintiffs and R. Frederick Walters, Kip D. Richards, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the firm Walters Bender Strohbehn & Vaughan, P.C. ("Plaintiffs' Counsel" or "Class Counsel"), have satisfied the requirements of Mo. Rule 52.08 and are hereby appointed and approved as representatives of the TMS Settlement Class and Counsel for the TMS Settlement Class, respectively.

5. **Class Notice.** The Court finds that the Class Mail Notice and its distribution to the TMS Settlement Class as implemented pursuant to the Agreement and the Preliminary Approval Order:

a. Constituted the best practicable notice to the members of the TMS Settlement Class under the circumstances of this Litigation;

b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the TMS Settlement Class of the following: (i) the pendency of this Litigation and the proposed Settlement; (ii) their right to exclude themselves from the TMS Settlement Class and the proposed Settlement; (iii) their right to object to any aspect of the proposed Settlement if they did not timely exclude themselves (including, but not limited to, final certification of the TMS Settlement Class, the fairness, reasonableness or adequacy of the Settlement as proposed, the adequacy of the Named Plaintiffs and/or Class Counsel's representation of the TMS Settlement Class, the proposed awards of attorneys' fees and expenses, and the proposed incentive awards

to the Named Plaintiffs); (iv) their right to appear at the Fairness Hearing if they did not timely exclude themselves from the TMS Settlement Class; and (v) the binding effect of this Final Approval Order and Judgment on all members of the TMS Settlement Class who do not timely exclude themselves from the Settlement;

c. Constituted due, adequate, sufficient and reasonable notice to all persons and entities entitled to be provided with notice; and

d. Constituted notice that fully satisfied the requirements of Mo. Rule 52.08, due process, and other applicable law.

6. **Final Settlement Approval.** The terms and provisions of the Agreement, including all exhibits, have been entered into in good faith and as a result of arm's length negotiations, and the Agreement is fully and finally approved as fair, reasonable and adequate as to, and in the best interests of, each of the Parties and the TMS Settlement Class Members, and in full compliance with all applicable requirements of the laws of the state of Missouri, the United States Constitution (including the Due Process Clause), and all other applicable laws. The Parties are hereby directed to implement and consummate the Agreement according to its terms and provisions.

7. **Binding Effect.** The terms of the Agreement, this Final Approval Order and Judgment shall be forever binding on the TMS Settlement Class Members and the Named Plaintiffs as representatives of the TMS Settlement Class, as well as their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them. The terms of the Agreement and this Final Approval Order and Judgment shall have *res judicata* and other preclusive effect as to the "Releasers" for the "Released Claims" as against the "Released Persons," all as defined in the Agreement.

8. **Releases Effective.** The Releasors, as defined in Paragraph 2.21 of the Agreement, shall be bound by the Releases provided in Paragraph 6 of the Agreement, which is incorporated herein in all respects, regardless of whether such Releasors received any compensation under the Agreement and Settlement. The Releases shall become effective as of the Effective Date specified in Paragraph 12 of the Agreement. As of the Effective Date specified in Paragraph 12 of the Agreement, the Releasors, as defined in Paragraph 2.21 of the Agreement, are permanently barred and enjoined from asserting, commencing, prosecuting or continuing any of the Released Claims, as defined in Paragraph 2.23 of the Agreement, against the Released Persons, as defined in Paragraph 2.22 of the Agreement. The Court expressly adopts all defined terms in Paragraph 6 of the Agreement, including but not limited to, the definitions of the persons and claims covered by the Releases (which are set forth at Paragraphs 2.21, 2.22 and 2.23 of the Agreement).

9. **Additional Payment to the Named Plaintiffs.** The Court hereby awards \$10,000.00 per couple (\$30,000.00 total) to be paid from the Settlement Fund to the Named Plaintiffs as incentive awards for their services as representatives of the Litigation Class in the Litigation.

10. **Attorneys' Fees and Expenses.** Plaintiffs' Counsel are awarded \$18,822.46, representing an allocated share of the litigation expenses and court costs that Plaintiffs' Counsel has incurred and advanced as of June 30, 2013 in connection with the Litigation and the Settlement, which shall be deducted from the "Settlement Fund" as defined in the Agreement. In addition, the Court awards Plaintiffs' Counsel common fund attorneys' fees of \$3,431,553.44, representing 47% of the "Net Settlement Fund" as defined in the Agreement. The Court finds and concludes that both the expense and fee awards to Plaintiffs' Counsel for their work and

services in connection with the Litigation and Settlement are reasonable for the reasons stated in *Class Counsel's Application for Award of Attorney's Fees, Litigation Costs and Expenses* and finds as follows;

a. The time and labor required to litigate this matter and obtain the Settlement was extensive.

b. The legal issues raised in prosecuting the claims of the TMS Settlement Class are complex and difficult.

c. The results obtained for the TMS Settlement Class are exceptional in light of the risks posed by the defenses asserted by the Settling Defendants to the TMS Settlement Class Members' claims. The Court specifically notes the *Common Fund Recovery* and the substantial benefits made available to the TMS Settlement Class including, without limitation, the fact that the Settlement provides the TMS Settlement Class – net of the proposed fee award – with a full recovery (100%) of the illegal fees and interest amount paid on the CFG-TMS loans, together with an additional sum characterized as prejudgment interest for purposes of the Settlement. The results achieved are of paramount importance when considering the fee request and certainly justify the fee request.

d. The length, progression and work performed by counsel throughout this litigation, which spans more than 13 years justifies the fee request.

e. No member of the TMS Settlement Class timely excluded themselves from the Settlement; and no TMS Settlement Class Members objected to the fee request or any other aspect of the Settlement. The reaction of the TMS Settlement Class to the Settlement has been unanimously favorable, which also justifies the fee request.

f. The fee in this case was contingent. Class Counsel would have received no fee had they not been successful. In addition, Class Counsel risked a considerable amount of time and expenses and advances on the successful outcome of this matter.

g. The fee request is in line with the percentage fee awards approved by Missouri courts, both state and federal, for the class settlements reached and approved in a number of other MSMLA cases.

h. The litigation costs and expenses are reasonable and equitable for a matter of this complexity and duration.

11. **No Other Payments.** The preceding paragraphs of this Final Approval Order and Judgment cover, without limitation, any and all claims for attorneys' fees and expenses, costs or disbursements incurred by Plaintiffs' Counsel and any other counsel representing the Named Plaintiffs as representatives of the TMS Settlement Class and/or incurred by the TMS Settlement Class Members in connection with or related in any manner to this Litigation, the Settlement of this Litigation, the administration of the Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement or this Final Approval Order and Judgment.

12. **No Admissions.** Neither this Final Approval Order, nor the accompanying Final Judgment, nor the Agreement, nor any of its terms or provisions, nor any of the negotiations between the Parties or their counsel, nor any action taken to carry out this Order or the Final Judgment, 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 TMS Settlement Class Members hereunder represents the amount that 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 event be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, 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 necessary in a proceeding to enforce the terms of this Order and the Agreement or to prove or show that a compromise in settlement of the Released Claims per the Agreement, in fact, was reached; provided, however, that the Agreement and Final Approval Order and Judgment may be filed by a Settling Defendant in any action against or by a Settling Defendant or 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.

13. **Dismissal of Litigation Against the Settling Defendants.** The Litigation against the Settling Defendants with respect to the CFG-TMS Loans, including any individual and all class claims arising from the CFG-TMS Loans, is dismissed with prejudice as to the TMS Settlement Class Members, without fees or costs to any Party, except as provided in the Agreement and/or this Final Approval Order and Judgment, subject to the Court's retention of jurisdiction to vacate, rescind, cancel, annul and deem "void" and/or "no longer equitable" for purposes of Mo. Rule 74.06 this Final Approval Order and/or the Final Judgment and reinstate

the claims of the Named Plaintiffs and the TMS Settlement Class Members against the Settling Defendants pursuant to the Agreement in the event the Settlement does not (or cannot) become effective as provided in Paragraph 12 of the Agreement. The Litigation and all other individual and class claims and causes of action shall remain pending including, but not limited to, the any and all claims against (1) Wells Fargo Bank, N.A., individually and/or as the assignee and/or successor to any other person, association or entity including, but not limited to, Norwest Bank Minnesota, N.A., that arise from or relate in any way to any CFG Loan or any other loan that is not a CFG-TMS Loan and/or any and all claims of by the Non-TMS Plaintiff Borrowers with respect to the CFG Loans, and (2) The Bank of New York Mellon (f/k/a The Bank of New York) that arise from or relate in any way to any CFG Loan or any other loan that is not a CFG-TMS Loan and/or any and all claims of by the Non-TMS Plaintiff Borrowers with respect to the CFG Loans.

14. **Claims of Non-TMS Plaintiff Borrowers.** The Court finds and concludes that the “CFG Loans” of the “Non-TMS Plaintiff Borrowers” as defined in Paragraph 2.18 of the Agreement were not purchased by and/or assigned to Integrated Capital Group or TMS Mortgage, Inc. (d/b/a “The Money Store”) and that, given this fact, as stipulated by the Parties, the Non-TMS Plaintiff Borrowers cannot recover any damages, penalties or other relief from the Settling Defendants or other Released Persons with respect to the CFG-TMS Loans. This finding and/or conclusion shall not be deemed or construed as a holding that any of the Non-TMS Plaintiff Borrowers have in any way released any claims, of whatever type or kind, with respect to the CFG Loans or otherwise.

15. **Claims Reserved.** The dismissal of the Litigation and claims against the Settling Defendants as provided in the Agreement and this Final Approval Order and Judgment shall in

no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of the Litigation or any motions and/or claims or causes of action other than the Released Claims as to the Released Persons by the Releasers.

16. **Enforcement of Settlement.** Nothing in this Final Approval Order and Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

17. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and Judgment. Without in any way affecting the finality of this Final Approval Order and Judgment, the Court expressly retains jurisdiction as to all matters relating to the administration and enforcement of the Agreement and Settlement and of this Final Approval Order and Judgment, and for any other necessary purpose as permitted by Missouri law, including, without limitation:

a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Final Approval Order and Judgment (including, without limitation, whether a person is or is not a member of the TMS Settlement Class or a TMS Settlement Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and the Final Judgment);

b. entering such additional orders as may be necessary or appropriate to protect or effectuate the Court's Final Approval Order and the Final Judgment and/or to ensure the fair and orderly administration of the Settlement and distribution of the Settlement Fund; and

c. entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

18. No Just Reason for Delay. The Court expressly determines that there is no just reason for delay under Mo. Rule 74.01.

IT IS SO ORDERED.

Dated: 10/29/13

/s/ K. Elizabeth Davis

K. Elizabeth Davis, Circuit Judge

CERTIFIED COPY

STATE OF MISSOURI COUNTY OF CLAY. This is to certify that the foregoing is a true and correct copy of the documents on file in my office. Witness my hand and official seal this 29th

day of Oct 2013

Clerk of Circuit Court

By [Signature] D.C.