

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

JOYCE W. AND LUKE SHOKERE
AND MICHAEL D. MAYO,

Plaintiffs,

vs.

RESIDENTIAL FUNDING COMPANY, LLC
AND GMAC MORTGAGE, LLC,

Defendants.

Case No. 1116-CV30478

Division 15

FILED-CIRCUIT COURT
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**ORDER 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 October 1, 2011 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on **March 12, 2012**, 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 November 9, 2011; 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 Order Finally

Approving the Class Action Settlement and Certifying a Class for Settlement Purposes); (v) Exhibit D (Proposed Final Judgment); (vi) Exhibit E (list of members of the RFC Settlement Class, **filed under seal**); (vii) Exhibit F (list of connected cases); and Exhibit G (list of RFC affiliates).

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 RFC Settlement Class (as defined below) were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the RFC 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 RFC Settlement Class, and to dismiss the Litigation against the Settling Defendants with prejudice.

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

All persons who 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, and that:

- (1) was made by FirstPlus Bank (f/k/a Citizens Thrift and Loan Association) on or after May 16, 1994 and was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation); or
- (2) was purchased by or assigned to UBS Real Estate Securities, Inc. and either

closed on or after June 20, 2002, or was a loan for which interest was paid on or after June 20, 2002, and which was thereafter purchased by, assigned to, serviced by or master serviced by Residential Funding Company, LLC (f/k/a Residential Funding Corporation) or GMAC Mortgage, LLC (formerly GMAC Mortgage Corporation).

No members of the RFC Settlement Class timely requested to be excluded from or “opted out” of the RFC Settlement Class.

4. **Adequacy of Representation.** There are no apparent conflicts of interest between the Named Plaintiffs and the RFC Settlement Class, or among the members of the RFC Settlement Class. Plaintiffs’ Counsel will fairly and adequately represent and protect the interests of the RFC 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 Strohhahn & 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 RFC Settlement Class and Counsel for the RFC Settlement Class, respectively.

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

- a. Constituted the best practicable notice to the members of the RFC Settlement Class under the circumstances of this Litigation;
- b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the RFC Settlement Class of (i) the pendency of the Litigation and the proposed Settlement, (ii) their right to exclude themselves from the RFC Settlement Class and the proposed Settlement, (iii) their right to object to any

aspect of the proposed Settlement (including, but not limited to, the following: final certification of the RFC 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 RFC Settlement Class; the proposed awards of attorney's fees and expenses; and the proposed incentive award), (iv) their right to appear at the Fairness Hearing if they did not exclude themselves from the RFC Settlement Class, (v) the effect of the Settlement on the Missouri Cases; and (vi) the binding effect of the Orders and Judgment in the Litigation on all members of the RFC Settlement Class who did not request exclusion;

c. Constituted notice that was reasonable and constituted due, adequate and sufficient 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 any 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 RFC 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 any other applicable law. 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 Order and the accompanying Final Judgment shall be forever binding on all of the RFC Settlement Class Members and the

Named Plaintiffs, individually and/or as a representative of the RFC 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, this Order and the accompanying Final 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. However, neither the Agreement, this Order nor the Final Judgment shall bar, preclude or otherwise operate as a dismissal, release, discharge or other adjudication of the claims of the Named Plaintiffs or the RFC Settlement Class Members (or the “Non-RFC Plaintiff Borrowers” as defined in the Agreement) against any person, association or entity other than the Settling Defendants and the “Released Persons” as defined in Paragraph 2.19 of the Agreement including, without limitation, the claims currently asserted pursuant to the Missouri Second Mortgage Loans Act, §§ 408.231-408.241 RSMo, against any person, association or entity named or to be named as a defendant in the Missouri Cases, as defined in paragraph 2.9 of the Agreement, other than the Settling Defendants and “Released Persons” as defined in Paragraph 2.19 of the Agreement.

8. **Releases.** The Releasers, as defined in Paragraph 2.18 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 persons received any compensation under the Agreement or Settlement. The Releases are effective as of the Effective Date specified in Paragraph 14 of the Agreement. The Court expressly adopts all defined terms in paragraph 2 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 2.18, 2.19 and 2.20 of the Agreement).

9. **Enforcement of Settlement.** Nothing in this Final Approval Order or the

accompanying Final Judgment shall preclude any action by any Party to enforce the terms of the Agreement.

10. **Additional Payment to the Named Plaintiffs.** The Court hereby awards \$3,000.00 to Named Plaintiff Michael D. Mayo and \$500.00 jointly to Named Plaintiffs Joyce W. and Luke Shokere to be paid from the Settlement Fund as an incentive award for their services as representatives of the RFC Settlement Class.

11. **Attorney's Fees and Expenses.** Plaintiffs' Counsel are awarded \$8,275.36, representing an allocated share of the litigation expenses and court costs that Plaintiffs' Counsel has incurred and advanced as of February 28, 2011 in connection with the Settlement and Litigation, which shall be deducted from the "Settlement Fund" as defined in the Agreement. In addition, the Court awards Plaintiffs' Counsel attorney's fees of \$979,628.23, representing forty percent (40%) of the "Net Settlement Fund" as defined in the Agreement. The Court finds and concludes that each of the above awards to Plaintiffs' Counsel for work and services in this case and in connection with the Settlement is reasonable for the reasons stated in *Class Counsel's Application for Award of Attorneys' Fees and Litigation Costs and Expenses*.

In making these awards the Court finds as follows:

a. The time and labor required to obtain the Settlement was extensive. Many thousands of hours of work were required by Class Counsel and persons working for them during the prosecution of this matter. This work included, among other things, the substantial efforts of Class Counsel to identify and obtain loan information for each of the RFC Settlement Class Members and to obtain and confirm the accuracy of additional data sought to prove the Settling Defendants' liability to the RFC Settlement Class and each RFC Settlement Class Member's individual damages. The Court's file reflects significant discovery and deposition

practice, extensive motion practice on a number of complex legal issues, preparation of damages methodologies, and numerous certification and class management issues.

b. The legal issues in this case were (and remain) complex and difficult. This factor is illustrated by the issues raised by the Settling Defendants in the Missouri Cases including, without limitation, those presented by the Settling Defendants' dispositive motions, and as a part of the appeals to the Eighth Circuit Court of Appeals and the United States Supreme Court.

c. The skill required of Class Counsel was unusually high in this case. Both the substantive and procedural aspects of this case were far more complex than usual.

d. Because of the volume of work required on this matter, Class Counsel was effectively precluded from taking on other matters and was forced to dedicate extensive resources to the matter. In addition, given the volume of work and the risks engendered by this type of litigation, this lawsuit was undesirable to other attorneys. Few law firms would have been willing to proceed against RFC and GMAC on these claims with the dedication and for the length of time necessary to obtain the Settlement.

e. The results obtained for the RFC Settlement Class are extraordinary in light of the risks posed by the assertions of the Settling Defendants to the RFC Settlement Class Members' claims. The Court specifically notes the *Common Fund Recovery* and the substantial benefits made available to the RFC Settlement Class. The results achieved are of paramount importance when considering the fee request and most unquestionably justify 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 large amounts of expenses and advances on the successful outcome of this matter. This matter had an overall high risk

profile from its inception which is the point in time at which risk should be evaluated. For matters with an overall high risk profile a contingency percentage in the range of 40% to 50% would be usual and expected. Here, the proposed contingency fee of 40% of the common fund to which the Parties agreed Class Counsel could request is not only at the low end of that contingency percentage range, the percentage fee is also to be applied to the net recovery, after deduction for expenses, and not to the gross recovery. A percentage fee award of 40% of the common fund as the contingency fee percentage is reasonable in this matter.

g. Class Counsel's experience, reputation and ability played a large role in obtaining the Settlement. Less experienced or able counsel would have likely achieved a lesser result or perhaps no result at all. In addition, the Settling Defendants were likewise represented by skilled and experienced defense attorneys of national reputation.

h. No member of the RFC Settlement Class has objected to any aspect of the settlement and no members of the RFC Settlement Class have timely opted out or excluded themselves from the Settlement. The reaction of the Class to the Settlement has been unanimously favorable.

i. With respect to the *Common Fund Recovery*, a division between the RFC Settlement Class and Class Counsel of 60% and 40%, respectively, is approved as fair and reasonable.

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

Given the factors to be considered in making and approving contingency fee awards in class actions including, among others, those listed above and the nature and extent of the legal work provided by Class Counsel since 2000, and the truly extraordinary results obtained for the

RFC Settlement Class, the proposed awards of attorney's fees and litigation expenses are approved as reasonable. Such attorney's fees and expenses shall be paid subject to the conditions set forth in the Agreement.

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

13. **Retention of Jurisdiction.** The Court has jurisdiction to enter this Final Approval Order and the accompanying Final Judgment. Without in any way affecting the finality of this Final Approval Order and the accompanying Final Judgment, this 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 the accompanying Final 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 or the Final Judgment (including, without limitation, whether a person is or is not a member of the RFC Settlement Class or an RFC 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;

c. vacating, rescinding, canceling, annulling and deeming "void," "no longer equitable" and/or setting aside for a reason that "otherwise justifies relief" for purposes of Mo. Rule 74.06 or Fed.R.Civ.P. 60(b) this Final Approval Order and/or the Final Judgment pursuant to the Agreement in the event the Settlement does not (or cannot) become effective as provided in paragraph 14 of the Agreement, in recognition of the fact that the Agreement is part of a unitary settlement of a set of cases asserting claims with respect to certain second mortgage loans in Missouri that RFC acquired and/or serviced or master serviced and by its terms shall be effective only upon the entry of final orders and judgments as to RFC in each of the other cases listed on Exhibit F to the Agreement; and

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

14. **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: (a) the validity of any claim or liability, any

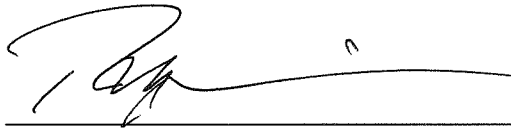
alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion; (b) the truth or relevance of any fact alleged by the Plaintiffs; (c) the existence of any class alleged by Plaintiffs; (d) the propriety of class certification if the Litigation were to be litigated rather than settled; (e) the validity of any claim or any defense that has been or could have been asserted in the Litigation or in any other litigation; (f) 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 (g) 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 Settling Defendants' denials, defenses, factual or legal positions, 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 (i) 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, or (ii) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other RFC Settlement Class Members hereunder, including, without limitation, the damages, attorney's fees award and costs; provided, however, that this Order and the Agreement may be filed by a Released Person in any action against or by RFC or a 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.

15. **Dismissal of Litigation Against the Settling Defendants.** The Litigation, including all individual and/or class claims asserted against RFC and GMAC Mortgage, LLC, as


the assignee(s), holder(s), servicer(s) or master servicer(s) of the RFC Related Loans, is dismissed with prejudice as to the Named Plaintiffs and the RFC Settlement Class Members, without fees or costs to any party, except as otherwise provided in the Agreement, this Order and/or the Final Judgment, and subject to the Court's retention of jurisdiction to vacate, rescind, cancel, annul and deem "void," "no longer equitable" and/or setting aside for a reason that "otherwise justifies relief" for purposes of Mo. Rule 74.06 or Fed.R.Civ.P. 60(b) this Final Approval Order and/or the Final Judgment and reinstate the claims of the Named Plaintiffs and the RFC Settlement Class Members against the Settling Defendants, or any one or more of them, pursuant to the Agreement in the event the Settlement does not (or cannot) become effective as provided in paragraph 14 of the Agreement. However, as provided both in the Agreement and in paragraph 7 above, the dismissal of the Litigation and the claims against the Settling Defendants shall in no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of the claims of the Named Plaintiffs or the RFC Settlement Class Members (or the "Non-RFC Plaintiff Borrowers" as defined in the Agreement) against any person, association or entity other than the Settling Defendants and the other "Released Persons" as defined in Paragraph 2.19 of the Agreement including, without limitation, the claims currently asserted pursuant to the Missouri Second Mortgage Loans Act, §§ 408.231-408.241 RSMo, against any person, association or entity named or to be named as a defendant in the lawsuits pending before the United States District Court for the Western District of Missouri styled *DeAnthony Thomas, et al., v. U.S. Bank National Association, N.D.*, Case No. 5:11-cv-06013-SOW and *Michael D. Mayo v. GMAC Mortgage, LLC, et al.*, Case No. 4:08-cv-00568-W-DGK, other than the Settling Defendants and the other "Released Persons" as defined in Paragraph 2.19 of the Agreement.

16. Separate Judgment. The Court will separately enter the accompanying Final Judgment.

Dated: March 12, 2012



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.
Teresa L. York
Court Administrator
Circuit Court of Jackson County, Missouri
3/12 By 
Deputy