

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

JOSEPH R. BERTELS, JR. AND SHARON
M. BERTELS, et al.,

Plaintiffs,

vs.

U.S. BANK NATIONAL ASSOCIATION,
et al.

Defendants.

Case No. 1616-CV28515

FILED
DIVISION 17

Division 17

MAR 06 2017

CIRCUIT COURT OF JACKSON COUNTY, MO
Jessica M. Smith
LAW CLERK

**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 November 30, 2016 (the "Agreement"), the evidence and arguments of counsel as presented at the Fairness Hearing held on March 6, 2017, 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 Final Approval Order and Judgment incorporates and makes the following a part hereof:

- a. The Agreement, filed with the Court on or about December 2, 2016; and
- b. The following exhibits to the Agreement: (i) Schedule A (Proposed Distribution Schedule of "Net Distributable Settlement Amount," **filed under seal**); (ii) Schedule B (List of Named Plaintiffs and Proposed Schedule of Incentive Awards); (iii) Exhibit A (Proposed Class Mail Notice); (iv) Exhibit B (Proposed Order Preliminarily Approving the Class Action Settlement); (v) Exhibit C (Proposed Final Approval Order

and Judgment); (vi) Exhibit D (list of members of the Trust Loans Settlement Class, **filed under seal**); and (vii) Exhibit E (List of Affiliates).

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

2. **Jurisdiction.** Because the Court finds that adequate notice was disseminated and all potential members of the Trust Loans 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 Trust Loans Settlement Class. The Court has subject matter jurisdiction over the above-captioned lawsuit (the “Litigation”), including, without limitation, jurisdiction to approve the proposed Settlement, to grant final certification of the Trust Loans Settlement Class, and to dismiss the Litigation against the Settling Defendants (as defined in the Agreement) with prejudice.

3. **Final Class Certification.** The Trust Loans Settlement Class is hereby finally certified for settlement purposes pursuant to Mo. Rule 52.08, the Court finding that for purposes of settlement, the Trust Loans Settlement Class fully satisfies all of the applicable requirements of Mo. Rule 52.08 and due process.

The Trust Loans Settlement Class is defined as follows:

All persons who obtained a “Second Mortgage Loan” as defined in § 408.231.1 RSMo from:

- (a) **First Consumers Mortgage, Inc.** (also known as First Consumers Financial, First Consumers Mortgage, and First Consumers Mortgage Corp.) on or after June 23, 1994, that was securitized via any of the following trusts: Bayview Financial Acquisition Trust 1998-B, Keystone Owner Trust 1998-P1, Keystone Grantor Trust 1998-P2, Keystone Owner Trust 1998-P2, Master Financial Asset Securitization Trust 1997-1, Master Financial Asset Securitization Trust 1998-1, Master Financial Asset Securitization Trust 1998-2, Mego Mortgage Home Loan Owner Trust 1997-1, Mego Mortgage Home Loan Owner Trust 1997-2, Mego Mortgage Home Loan Owner Trust

1997-4, and who did not timely exclude themselves from the litigation class certified in the class action lawsuit *Beaver v. U.S. Bank Trust National Association*, Case No. 00-CV-215097-01, filed June 23, 2000 (Cir. Ct. Jackson County, Missouri) (consolidated with *Beaver v. U.S. Bank Trust National Association*, Case No. 03-CV-213643, filed on May 28, 2003 (Cir. Ct. Jackson County, Missouri)); or

- (b) **Century Financial Group, Inc.** on or after June 28, 1994 that was securitized via Keystone Grantor Trust 1998-P2, Keystone Owner Trust 1998-P2, TMI Home Loan Trust 1998-A, or United National Home Loan Owner Trust 1999-2, and who did not timely exclude themselves from the litigation class certified in the class action lawsuit *Baker v. Century Financial Group, Inc.*, Case No. 7CV100004294, filed on June 28, 2000 (Cir. Ct. Clay County, Missouri).

If a member of the Trust Loans Settlement Class has died or otherwise voluntarily or involuntarily transferred his or her rights under a FCMC/CFG Related Trust Loan, such member's heir, representative, successor or assign shall also be deemed to be a member of the Trust Loans Settlement Class. If a member of the Trust Loans Settlement Class filed for Chapter 7 bankruptcy after obtaining his or her FCMC/CFG Related Trust Loan or is currently in a Chapter 13 bankruptcy, then the bankruptcy trustee shall also be deemed to be a Trust Loans Settlement Class Member as to the debtor Class Member's particular loan. No member of the Trust Loans Settlement Class requested to be excluded from or "opted out" of the Trust Loans Settlement Class.

4. **Adequacy of Representation.** 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. Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the Trust Loans Settlement Class. Accordingly, the Named Plaintiffs and R. Frederick Walters, Kip D. Richards, David M. Skeens and J. Michael Vaughan 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 Trust Loans Settlement Class and Counsel for the Trust Loans Settlement Class, respectively.

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

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

b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the Trust Loans Settlement Class of the following: (i) the pendency of this Litigation and the proposed Settlement, (ii) their right to exclude themselves from the Trust Loans 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 Trust Loans 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 Trust Loans Settlement Class; the proposed award of attorneys' fees and expenses; and the proposed incentive award to the Named Plaintiffs), (iv) their right to appear at the Fairness Hearing if they did not timely exclude themselves from the Trust Loans Settlement Class, (v) the effect of the Settlement on the Missouri Cases, and (vi) the binding effect of the Final Approval Order and Judgment in the Litigation on all members of the Trust Loans 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 any other applicable law.

6. **Trustee Approval Order.** The Court finds that the Trustees in their Representative Capacities provided the Trust Investor Notice as required by the Agreement and that the Trustee Approval Order has been entered.

7. **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 Trust Loans 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.

8. **Binding Effect.** Upon the Effective Date as specified in Section 15 of the Agreement, the terms of the Agreement and this Final Approval Order and Judgment shall become forever binding on the Trust Loans Settlement Class Members and the Named Plaintiffs as representatives of the Trust Loans Settlement Class Members, 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 Final Approval Order and Judgment shall have *res judicata* and other preclusive effect solely as to the "Releasers" for the "Released Claims" as against the "Released Persons," all as defined in the Agreement.

9. **Releases Effective.** Upon the Effective Date as specified in Section 15 of the Agreement, the Releasers as defined in Section 2.31 of the Agreement shall become bound by the Releases provided in Section 6 of the Agreement, which is incorporated herein in all respects, regardless of whether such Releasers received any compensation under the Agreement and Settlement. The Court expressly adopts all defined terms in Section 6 of the Agreement, including but not limited to, the definitions of the persons and claims covered by the Releases as set forth at Sections 2.31 (Releasers), 2.32 (Released Persons), and 2.33 (Released Claims) of the Agreement.

10. **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.

11. **Additional Payment to the Named Plaintiffs.** The Court hereby awards the amounts listed on Schedule B (totaling \$12,000.00) to be paid from the Settlement Fund to the Named Plaintiffs in the respective amounts as stated on Schedule B as incentive awards for their services as representatives of the Trust Loans Settlement Class in the Missouri Cases and the Litigation.

12. **Attorneys' Fees and Expenses.** Plaintiffs' Counsel are awarded \$38,267.91 representing an allocated share of the litigation expenses and court costs that Plaintiffs' Counsel has incurred and advanced as of October 10, 2016 in connection with the Missouri Cases, 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 \$877,379.44, representing 45% 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 Missouri Cases, the Litigation, and the

Settlement are reasonable for the reasons and based on the factors stated in *Class Counsel's Unopposed Application for Award of Attorneys' Fees, Litigation Expenses and Costs*. In making these awards the Court finds as follows:

a. The time and labor required to obtain the Settlement was extensive. Substantial time and work was required by Class Counsel and persons working for them while prosecuting the claims of the Trust Loans Settlement Class as part of the Missouri Cases. This work included, among other things, the substantial efforts of Class Counsel to identify and obtain loan information for each of the Trust Loans Settlement Class Members and to obtain and confirm the accuracy of additional data sought to prove the Settling Defendants' liability to the Trust Loans Settlement Class and each Trust Loans Settlement Class Member's individual damages. There was significant discovery practice, extensive motion practice on a number of complex legal issues, preparation of damage methodologies, and numerous certification and class management issues.

b. The legal issues raised during the prosecution of the claims of the Trust Loans Settlement Class were (and remain) complex and difficult. This factor is illustrated by the contentious and vigorous litigation in the Missouri Cases and by the issues raised by the Settling Defendants including, without limitation, those presented by the Settling Defendants' various dispositive motions filed in the Missouri Cases.

c. The skill required of Class Counsel was unusually high during the prosecution of the claims of the Trust Loans Settlement Class. Both the substantive and procedural aspects pertaining to the prosecution of those claims in the Missouri Cases 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 prosecuting the claims of the Trust Loans Settlement Class in the Missouri Cases over the past sixteen-plus years. 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 the Settling Defendants on these claims with the dedication and for the length of time necessary to obtain the Settlement.

e. The results obtained for the Trust Loans Settlement Class are extraordinary in light of the significant risks posed by the assertions of the Settling Defendants to the Trust Loans Settlement Class Members' claims. The Court specifically notes the substantial benefits made available to the Trust Loans Settlement Class. The results achieved were truly extraordinary and are of paramount importance when considering the fee request and 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. The prosecution of the claims of the Trust Loans Settlement Class had an overall high risk profile from its inception, which is the point in time at which risk should and must 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 45% of the common fund is reasonable and by no means unusual for a contingency fee case of this length, magnitude, and type. Further, the proposed contingency fee of 45% of the

common fund will be applied to the net recovery, after deduction for expenses and incentive fee awards, and not to the gross recovery. Accordingly, the requested percentage fee award of 45% of the common fund obtained for the Trust Loans Settlement Class is fair and 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 members of the Trust Loans Settlement Class have timely opted out or excluded themselves from the Settlement. Nor have any members of the Trust Loans Settlement Class objected to any of the terms of the Settlement. The reaction of the Class to the Settlement is therefore unanimously favorable.

i. The litigation costs and expenses that have been allocated to the prosecution of the claims of the Trust Loans Settlement Class 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 in the Missouri Cases and the truly extraordinary results obtained for the Trust Loans Settlement Class, the proposed awards of attorney's fees and litigation expenses and costs are approved as reasonable. Such attorney's fees, expenses, and costs shall be paid subject to the conditions set forth in the Agreement.

13. **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 paid or incurred by Plaintiffs' Counsel, any other legal counsel representing the Named Plaintiffs as representatives of the Trust Loans Settlement Class, and any Trust Loans 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 the Agreement or this Final Approval Order and Judgment.

14. **Claims of the "Non-Trust Loan Plaintiff Borrowers."** The Court finds and concludes that the loans of the "Non-Trust Loan Plaintiff Borrowers" as defined in Section 2.26 of the Agreement, including, but not limited to, the loans made to Named Plaintiffs James C. Baker and Jill S. Baker Weyrauch, Jeffrey A. Cox and Michelle A. Cox, William L. Springer and Linda A. Springer Babcock, are not FCMC/CFG Related Trust Loans and that, given this fact as stipulated by the Parties, the Non-Trust Loan Plaintiff Borrowers cannot recover any damages, penalties or other relief from the Settling Defendants or other Released Persons with respect to the FCMC/CFG Related Trust Loans (other than the incentive award made under this Final Approval Order and Judgment). This finding and conclusion by the Court shall not be deemed or construed as a determination or holding that any of the Non-Trust Loan Plaintiff Borrowers have in any way released any claims, of whatever type or kind, with respect to their respective loans or otherwise, including, but not limited to, any claims and causes of actions that the Non-Trust Loan Plaintiff Borrowers have against Wilmington Trust Company as an assignee, owner, holder, trustee, servicer and/or master servicer of any loans other than the FCMC/CFG Related Trust Loans.

15. **Contribution, Indemnity and Other Claims.** Upon the Effective Date specified in Section 15 of the Agreement, the Trust Loans Settlement Class Members shall and are hereby

ordered to credit, satisfy and offset against any judgment that may be entered in favor of the Trust Loans Settlement Class Members in the Missouri Cases that equitable portion of their damages or any other claimed form of monetary relief (“Damages”) which relate to the FCMC/CFG Related Trust Loans, and which were caused by the acts or fault, if any, of the Released Persons as may be later determined at any trial or other disposition of the Missouri Cases or any other action, and further, shall release and discharge that portion of their claims for Damages in the Missouri Cases which relate to the FCMC/CFG Related Trust Loans as may be determined to be the portion of fault for which any or all of the Released Persons are deemed liable at any trial or other disposition of the Missouri Cases or any other action or proceeding. The Court additionally finds and concludes that any and all claims against the Released Persons for contribution and non-contractual indemnity related to or arising from the Released Claims or from any claims of the Trust Loans Settlement Class Members in either of the Missouri Cases with respect to the FCMC/CFG Related Trust Loans are permanently barred, prohibited and enjoined.

16. **No Admissions.** Neither this Final Approval Order and 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 Final Approval Order and 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 Plaintiffs; (c) the existence of any class alleged by Plaintiffs; (d) the propriety of class certification if the Litigation or the Missouri Cases 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 Trust Loans 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 denials, defenses, factual or legal positions of the Settling Defendants, and shall not be offered or received in evidence in this Litigation or 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 (i) to enforce the terms of this Final Approval Order and Judgment 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 Trust Loans Settlement Class Members hereunder, including, without limitation, the damages, attorneys' fees award and costs; provided, however, that this Final Approval Order and Judgment and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be filed by the Settling Defendants in any action against or by the Settling Defendants or other Released Persons 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 issue or claim preclusion or similar defense or counterclaim and provided, further that this Final Approval Order and Judgment and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be filed by the Settling Defendants in any action filed against or by the Settling

Defendants or any other Released Person to support a claim for insurance coverage, indemnification, contribution, or reimbursement relating to the Agreement.

17. **Dismissal of Litigation.** This Litigation, including all individual and class claims arising from the FCMC/CFG Related Trust Loans, is dismissed with prejudice as to the Named Plaintiffs and Trust Loans Settlement Class Members, without fees or costs to any party, except as otherwise provided in the Agreement and/or this Final Approval Order and Judgment, and subject to the Court's retention of jurisdiction to vacate, rescind, cancel, annul and deem "void" and/or "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 Judgment and reinstate the claims of the Named Plaintiffs and the Trust Loans 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 Section 15 of the Agreement. However, as provided in the Agreement and this Final Approval Order and Judgment, the dismissal of the Litigation and the claims against Defendants as named herein shall in no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of any claims of the Named Plaintiffs or 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. Nor shall the dismissal of the Litigation stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of any claims arising from any of the Missouri Second Mortgage Loans made to the Non-Trust Loan Plaintiff Borrowers. The claims and causes of action of the Non-Trust Loan Plaintiff Borrowers, including but not limited to Named Plaintiffs James C. Baker and Jill S. Baker Weyrauch, Jeffrey A. Cox and Michelle A. Cox, William L. Springer and Linda A. Springer

Babcock, against Wilmington Trust Company as an assignee, owner, holder, trustee, servicer and/or master servicer of any loans other than the FCMC/CFG Related Trust Loans, and all other assignees, owners, holders, trustees, servicers and/or master servicers of any loans other than the FCMC/CFG Related Trust Loans, are not “Released Claims,” have not been released, and are expressly preserved.

18. **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, 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 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 Trust Loans Settlement Class or a Trust Loans Settlement Class Member; and whether any claim or cause of action is or is not barred by this Final Approval Order and Judgment);

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

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 and/or Fed.R.Civ.P. 60(b) this Final Approval Order and Judgment pursuant to the Agreement in the event the Settlement does not (or cannot) become effective as provided in Sections 15 and 16 of the Agreement; and

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

Dated: 3/6/17



JACK GRATE, Circuit Judge