

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

DEMETRIUS ROBINSON,
*On Behalf of Himself and All Others Similarly
Situated,*

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC,

Defendant.

Case No. 8:14-CV-03667-TJS

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL JUDGMENT**

Plaintiff Demetrius Robinson brought this class action suit against Defendant Nationstar Mortgage, LLC (“Nationstar”) on behalf of a class of mortgage loan borrowers who submitted applications for loss mitigation. The Amended Class Action Complaint alleges that Nationstar violated Consumer Financial Protection Bureau (“CFPB”) regulations implementing the Real Estate Settlement Procedures Act (“RESPA”), as well as the Maryland Consumer Protection Act, with respect to Mr. Robinson’s and the Class Members’ loss mitigation applications. On September 9, 2019, the Court granted in part and denied in part Plaintiff’s Motion for Class Certification. The parties a reached a settlement on behalf of the Class, and the Court granted preliminary approval of the Settlement. Notice was sent to the Class. Plaintiff seeks final approval of the settlement. For the reasons discussed below, the Court overrules all objections and GRANTS the Motion.

I. BACKGROUND

Plaintiff filed this lawsuit on November 21, 2014, asserting claims under 12 C.F.R. §

1024.41 (“Section 1024.41”) and the Maryland Consumer Protection Act (“MCPA”). Plaintiff alleged that Nationstar violated Section 1024.41 and the MCPA in connection with processing their applications for loss mitigation. Loss mitigation is a process by which a servicer allows borrowers to change the terms of their payment obligations in order to avoid foreclosure or delinquency; it can take the form of a loan modification and forbearance, but can also allow owners to transfer ownership without a foreclosure, including by a short-sale or a deed in lieu of foreclosure.

On September 19, 2019, the Court certified a Nationwide Class of “all persons in the United States that submitted a loss mitigation application to Nationstar after January 10, 2014 and through the date of the Court’s certification order,” as well as a Maryland Subclass of “persons in the state of Maryland that submitted a loss mitigation application to Nationstar after January 10, 2014 and through the date of the Court’s certification order.” Dkt. 233. The Court appointed Mr. Robinson as Class Representative, appointed his counsel as Class Counsel, and authorized Plaintiff to pursue his four remaining claims on behalf of the Class and Subclass. In August 2020, the parties reached a settlement in this matter. The Court granted preliminary approval, and Plaintiff now seeks final approval of the class settlement. A final fairness hearing was held on December 10, 2020.

II. SETTLEMENT TERMS

A. Benefits to the Class

The Settlement Agreement provides substantial benefits to the Class in the form of a \$3 million Settlement Fund that will provide payments, settlement administration costs, and attorneys’ fees and costs to benefit the Class. After payment of costs of administration and any fees, expenses, and service awards authorized by the Court, the monetary awards to Class Members who submit Valid Claims shall be awarded according to a simple points system set forth in the Settlement

Agreement. Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claimants will receive their payments via check.

Prior to distributing Settlement Shares, the Settlement Administrator will attempt to update Class Members' last known addresses via the National Change of Address database. Class Members' Settlement Shares returned with a forwarding address shall be re-mailed to the new address within twenty-one days. If a check is returned undeliverable without a forwarding address, the Settlement Administrator will perform a skip trace search and make an attempt to re-mail the check within twenty-one days. Checks that are not cashed within 180 days will be voided and returned, although that period may be extended by an additional 90 days for good cause shown.

If there is any amount in the Settlement Fund that remains following the distribution of checks to Eligible Claimants as a result of checks returned undeliverable or not cashed within 180 days, that amount will be distributed on a *pro rata* basis to Eligible Claimants who cashed their checks according to the formula set forth in the Settlement Agreement. If there is any amount in the Settlement Fund following the secondary distribution, or there are not enough funds to make a secondary distribution economically feasible, then the remaining amount shall be paid to Public Justice Foundation, a 501(c)(3) nonprofit organization that advocates for consumers, pursuant to the *cy pres* doctrine.

B. Attorneys' Fees and Costs and Service Award

The Settlement Agreement authorizes Plaintiff to seek Court approval for attorneys' fees and costs in an amount not to exceed \$1,300,000. The Settlement Agreement provides that Plaintiff may petition the Court for approval of a service award not to exceed \$5,000.

C. Release

The Settlement Agreement provides that Class Members who have not opted out of the

Settlement will release Nationstar from claims “that were or could have been asserted by the Class Representative or Class Members in connection with the submission of loss mitigation applications during the Class Period.” The Settlement Agreement provides that Class Members waive and relinquish the rights and benefits of California Code § 1542 and similar provisions.

D. Notice to Class

Notice was sent to potential Class Members pursuant to the Settlement Agreement and the method approved by the Court. The Class Notice adequately describes the litigation and the Settlement Agreement. The Notices further explained the amount of the Settlement Fund, the plan of allocation, that Class Counsel will apply for an award of attorneys’ fees and costs, and that the Class Representative will apply for a Service Award.

III. ANALYSIS

A class was previously certified in this case, so the Court reviews the fairness, adequacy, and reasonableness of the proposed settlement, and the adequacy of the proposed notice.

A. Fairness of Settlement Terms

Federal Rule of Civil Procedure 23 requires court approval of class action settlements. Fed. R. Civ. P. 23(e). “The primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations.” *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). Accordingly, the court may approve a settlement only upon a finding that the settlement is “fair, reasonable, and adequate.” *Alloways v. Cruise Web, Inc.*, No. CBD-17-2811, 2019 WL 1902813, at *8 (D. Md. April 29, 2019). In the Fourth Circuit, courts look to a four-factor test to evaluate fairness: “(1) the posture of the case at the time settlement was proposed, (2) the extent of discovery that had been conducted, (3) the circumstances surrounding the negotiations, and (4) the experience of counsel.” *Jiffy Lube*, 927

F.2d at 159. Adequacy is assessed through “(1) the relative strength of the plaintiffs’ case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter of the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement.” *Id.*

The Court previously found that the Settlement was fair, adequate, and reasonable in its preliminary approval order. Nothing has changed since the Court granted preliminary approval, and thus the Court maintains its approval. The Settlement Agreement was the product of serious, informed, non-collusive negotiations, including multiple settlement conferences and prolonged negotiations before the undersigned. The case was litigated for several years and both sides had ample opportunity to investigate their claims. Class Counsel and counsel for Nationstar are experienced and sophisticated. The Settlement Agreement provides fair and adequate relief to the Class and does not unfairly give preferential treatment to any Class Members.

The release is narrowly tailored and limited to claims pled or that could have been pled based on the facts alleged in the Complaint. Thus, while the release is broad in that it releases claims both known and unknown, the released claims are appropriately limited to the factual predicate of this action.

To the extent there were objections to the Settlement Agreement, they are overruled.

Having considered the above factors, the Court finds that the Settlement is fair, reasonable, and adequate, and GRANTS final approval of the Settlement.

B. Motion for Fees, Costs, and Service Award

Plaintiffs’ motion for attorney’s fees, costs, and a service award is filed at ECF No. 275. That motion is GRANTED.

IV. FINDINGS AND CONCLUSIONS

This matter having come before the Court for hearing pursuant for approval of the settlement set forth in the Settlement Agreement and Release, and due and adequate notice having been given to the Settlement Class Members as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed of the promises and good cause appearing therefore, it is ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of the Action and over all of the parties to the Action.

2. The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.

3. All objections to the Settlement are overruled.

4. A list of Settlement Class Members who timely requested exclusion is filed at ECF No. 286-3 at 35-36.

5. The Court finds that Defendant properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of

2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant’s notice, and finds that it complied with all applicable requirements of CAFA. Further, more than ninety (90) days have elapsed since Defendant provided notice pursuant to CAFA and the Final Approval Hearing.

6. The Court finds the Settlement was entered into in good faith, that the settlement is fair, reasonable and adequate, and that the Settlement satisfies the standards and applicable requirements for final approval of this class action settlement under applicable law, including the provisions of Fed. R. Civ. P. 23. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable and in the best interests of the Settlement Class Members considering the disputed facts and circumstances of and affirmative defenses asserted in the Action and the potential risks and likelihood of success of pursuing litigation on the merits.

7. The Court has specifically considered the factors relevant to class settlement approval—including, *inter alia*, the strength of Plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of not maintaining class action status throughout trial; the relief provided for in the settlement; the extent of discovery completed and stage of the proceedings; the experience and views of counsel; and the reaction of the Settlement Class Members to the proposed settlement—and upon consideration of such factors finds that the Settlement is fair, reasonable, and adequate to all concerned.

8. Accordingly, the Settlement is hereby finally approved in all respects, and the Parties are hereby directed to implement and consummate the Settlement Agreement according to its terms and provisions.

9. The terms of the Settlement Agreement and of this Final Approval Order and Judgment, including all exhibits thereto, shall be forever binding in all pending and future

lawsuits maintained by the Plaintiff and all other Settlement Class Members, as well as their family members, heirs, administrators, successors, and assigns.

10. Upon entry of this Order, compensation to Settlement Class Members who submitted shall be effected pursuant to the terms of the Settlement.

11. In addition to any recovery that Plaintiff may receive under the Settlement, and in recognition of the Plaintiff's efforts and risks taken on behalf of the Settlement Class, the Court hereby approves the payment of a Service Award to Class Representative in the amount of \$ 5,000.00 .

12. The Court approves the payment of attorneys' fees and litigation expenses to Class Counsel in the sum of \$ 1,300,000.00

13. The Court approves and orders payment in an amount commensurate with Epiq Systems, Inc.'s actual costs, and not to exceed \$300,000 to Epiq Systems, Inc. for performance of its settlement claims administration services.

14. The Releases, which are set forth in Section 8 of the Settlement Agreement, are expressly incorporated herein in all respects and are effective as of the Effective Date. Upon the Effective Date, the Plaintiff and Settlement Class Members, except the excluded individuals referenced at ECF No. 286-3 at 35-36, shall have, by operation of this Final Approval Order Judgment, fully, finally and forever released, relinquished, and discharged the Released Parties from all claims or liabilities arising from or related to the facts, circumstances or subject matter of this Action, as set forth in Section 8 of the Settlement Agreement. Upon the Effective Date, all Settlement Class Members shall be and are hereby permanently barred and enjoined from the institution or prosecution of any and all claims that are released under the terms of the Settlement. This Action and all claims of Plaintiff and the Settlement Class Members are hereby

dismissed with prejudice. Furthermore, Plaintiff and all Settlement Class Members are hereby barred and permanently enjoined from (a) filing, commencing, prosecuting, intervening in, promoting, or participating (as class members or otherwise) in any lawsuit in any jurisdiction based on or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action; and (b) organizing Settlement Class Members who have not been excluded from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

15. This Final Order and the Settlement Agreement (including the exhibits thereto) may be filed in any action against or by any of the Released Parties (as that term is defined herein and the Settlement Agreement) to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

16. This Order, the Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with this Settlement are not, and shall not be construed as, an admission by Defendant of any liability or wrongdoing in this or in any other proceeding.

17. This Judgment is intended to be a final disposition of the above captioned action in its entirety, and is intended to be immediately appealable.

18. This Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of the Action, including but not limited to all matters related to the Settlement and the determination of all controversies related thereto.

IT IS SO ORDERED.

Dated: December 11, 2020



TIMOTHY J. SULLIVAN
UNITED STATES MAGSTRATE JUDGE