

**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
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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 have now reached a settlement on behalf of the Class, and Plaintiff seeks preliminary approval of the settlement. For the reasons discussed below, the Court GRANTS the Motion.

I. BACKGROUND

Plaintiff and his wife, Tamara Robinson, 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”). The Robinsons 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.

After several years of hard-fought litigation, including a motion to dismiss, motion for summary judgment, discovery conferences and motions, depositions, and expert discovery, Plaintiff filed a motion for class certification and Nationstar filed a motion for summary judgment. Dkts. 174-175. On September 19, 2019, the Court granted in part and denied in the motion for summary judgment and the motion for class certification, and denied the motion to strike. Dkts. 232-233. The Court granted summary judgment as to Mrs. Robinson’s claims, and as to Mr. Robinson’s claims except for those under 12 C.F.R. § 1024.41b(2)(i)(B), which requires that an acknowledgment letter be sent within five days of a receipt of a loss mitigation application; 12 C.F.R. § 1024.41(c)(1)(ii), which requires a servicer to respond to a loan modification application within 30 days of receipt and provide notice of appeal rights; 12 C.F.R. § 1024.41(b)(1), which requires reasonable diligence in obtaining documents and information to complete a loss mitigation application; and Md. Code Ann., Com. L. § 13-316(c), which requires a response to a mortgage servicing complaint or inquiry within 15 days. 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. Plaintiff now seeks preliminary approval of the class settlement.

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

The parties' proposed Notice Plan provides that, no later than 45 days from entry of the Preliminary Approval Order, the Settlement Administrator shall send the Class Notice to Class Members identified in the Class List, which was previously provided to the Settlement Administrator. Notice shall be provided by first-class mail and email. Before mailing the Postcard Notice, the Settlement Administrator will update the addresses provided by Nationstar with the National Change of Address database. If the Postcard Notice is returned as undeliverable, the

Settlement Administrator shall perform a skip trace search and shall make one attempt to re-mail the Postcard Notice as soon as possible before the Response Deadline. It will be conclusively presumed that the intended recipients received the Postcard Notice if the mailed Postcard Notices have not been returned to the Settlement Administrator as undeliverable within fifteen (15) days of mailing. In addition, the Longform Notice will be available on the Settlement Website along with important case documents and a copy of the Settlement Agreement. The Settlement Administrator will mail or email a copy of the Longform Notice to any Class Member who requests a copy.

The proposed notices were submitted with the Motion. The Notices inform Class Members of the existence of the lawsuit and the Settlement Agreement, and explain that any Class Member who wishes to receive payment from the Settlement must submit a Claim Form. The Postcard Notice attaches a copy of the Claim Form that Class Members may detach and mail back. The Email Notice links to the Settlement Website where Class Members may submit an online Claim Form. The Notices also explain how Class Members may request exclusion or file objections to the Settlement.

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 if 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.*

Here, the Court is satisfied that the Settlement is fair and adequate. 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 Settlement Fund of \$3,000,000 will provide benefits to the Class in the form of cash payments to Class Members who submit valid Claim Forms, attorneys’ fees and costs, a service award to the Class Representative, and the costs of notice and administration. Here, as in most class actions, there is risk to both parties in continuing towards trial. The Settlement fairly accounts for that risk.

The Court further finds that provision for attorneys’ fees and costs is fair and reasonable. Class Counsel intends to seek an award of attorneys’ fees according to Class Counsel’s lodestar

but no more than \$1,300,000, which represents a negative multiplier of the lodestar. The proposed service award of \$5,000 is also within the range of reasonableness. Accordingly, preliminary approval is appropriate, though final approval will depend on counsel providing sufficient information to support the requested amounts.

Finally, the Court finds that 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.

B. Sufficiency of Notice

To find notice to absent class members sufficient, the Court must analyze both the type and content of the proposed notice. Here, the Court finds that the proposed Notice is sufficient.

Due process under Rule 23 requires that class members receive notice of the settlement and an opportunity to be heard and participate in the litigation. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974) (“[I]ndividual notice must be provided to those class members who are identifiable through reasonable effort.”). The mechanics of the notice process are left to the discretion of the Court, subject only to the broad reasonableness standards imposed by due process.

Here, the Court finds that the Notices contain all of the information required under the Federal Rules and the Constitution. The Notices include the basics of the case, the class definition, the class claims, and the procedures for opting out and objecting to the settlement. The Postcard Notice and Email Notice also advise Class Members where they can get further information about the Settlement. The Notices also inform the Class Members that remaining a member of the Class will result in the Class Member giving up his or her claims and being bound by the Settlement

Agreement. This Notice is sufficient.

IV. FINDINGS AND CONCLUSIONS

The Court makes the following findings and rulings on Plaintiff's motion for preliminary approval.

1. The Court has reviewed the terms of the Parties' Settlement Agreement and Release (the "Settlement") and preliminarily finds that the Settlement appears sufficiently fair, reasonable, and adequate to warrant dissemination of class notice of the proposed settlement and scheduling a formal fairness hearing. The Court finds that the Settlement contains no obvious deficiencies and that the Parties entered into the settlement in good faith, following arm's length negotiations between their respective counsel. The Court adopts the definitions set forth in the Settlement and all defined words or phrases used in this Order shall have the same meaning as in the Settlement.

2. The Court previously certified a 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." ECF No. 233.

3. Pursuant to Rule 23(c)(2)(B) and Rule 23(e) of the Federal Rules of Civil Procedure, the Court orders that the Settlement Class be given notice of the pendency of this action and the Parties' proposed Settlement. The Court finds that the Class Notice dissemination procedure set forth in Section VI of the Settlement Agreement (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and of their right to object or to exclude themselves from the proposed Settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements as set forth by law. Thus, the Court adopts and incorporates the Class Notice dissemination procedures set forth in Section VI of the Settlement into this Order.

4. The Court approves the Postcard Notice, Longform Notice, and Email Notice, which are attached as Exhibits 2, 3, and 4 to the Agreement. The Court also approves the Claim Form attached as Exhibit 1 to the Agreement and the creation of a Settlement Website by the Settlement Administrator.

5. The Court appoints Epiq Systems, Inc. as Settlement Administrator to disseminate notice to the Settlement Class and administer the settlement. The Court orders Epiq Systems, Inc. to: (i) create the Settlement Website; (ii) complete dissemination of the Class Notice to the Settlement Class no later than 45 days after preliminary approval; (iii) file proof of the dissemination of the Class Notice to the Settlement Class and a list of all request for exclusions and objections received no later than the filing date for the Class Representative's motion for entry of the Final Approval Order and Judgment; (iv) establish a post office box to be used for receiving opt-out requests, objections, notices of intention to appear, and any other communications from Settlement Class Members; and (v) promptly furnish Class Counsel, Defense Counsel, and Defendant with copies of any and all opt-out requests, objections, notices of intention to appear, or other communications from Settlement Class Members that come into its possession.

6. The Court sets a Final Approval Hearing on 12/10/2020 to consider the fairness, reasonableness, and adequacy of the proposed Settlement and determine whether it should finally be approved by the Court. At that time, the Court will hear any applications for attorneys' fees, expenses, and/or service awards. The hearing will begin at 10:00 a.m.

7. The Court sets 12/4/2020 as the deadline for filing the final approval motion and 12/4/2020 as the deadline for filing the application for the Attorneys' Fee Award and Service Award.

8. The Court sets 11/27/2020 as the deadline by which Settlement Class Members must submit any (i) Claim Form; (ii) request for exclusion from the Settlement Class; or (iii) objection to the Settlement or to the Attorneys' Fee Award. The procedures and requirements for opting out of the Settlement Class or objecting to the Settlement or to the Attorneys' Fee Award are set forth below.

9. The Court sets 12/8/2020 as the deadline for filing any reply memorandum in further support of final approval of the proposed Settlement or the Attorneys' Fee Award application.

10. The Settlement Website shall contain a Claim Form which may be downloaded or printed from the Settlement Website. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Class Members who are co-borrowers or joint borrowers on the same loan may only file one Claim Form. To be valid, a Claim Form must be postmarked or submitted online no later than one hundred (100) days after the entry of this Order.

11. Any Settlement Class Member who wishes to be excluded from the Settlement Class must send a written Request for Exclusion to the Settlement Administrator, by first-class mail, postage prepaid, to the address provided in the Class Notice and Settlement Website. Any such Request for Exclusion must be postmarked no later than one hundred (100) days after the entry of this Order. To be valid, the Request for Exclusion must (1) be postmarked on or before the Response Deadline; (2) include the Class Member's name, address, and telephone number; (3) be personally signed and dated by the Class Member; and (4) contain a clear request that the individual would like to opt out or be excluded, by use of those or other words clearly indicating a desire not to participate in the Settlement. Any Settlement Class Member who does not submit a timely written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

12. Any Settlement Class Member who has not filed a timely written Request for Exclusion and who complies with the requirements of this Paragraph may comment in support of, or in opposition to, any aspect of the proposed settlement either on his or her own or through an attorney hired at his or her expense. Any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing, only if the Person making an objection shall, no later than 100 days after entry of this Order, file notice of his or her intention to do so and at the same time (a) file copies of such papers he or she proposes to submit at the Final Approval

Hearing with the Clerk of the Court, (b) file copies of such papers through the Court's CM/ECF system if the objection is from a Settlement Class Member represented by counsel, who must also file an appearance, and (c) send copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defense Counsel at the addresses below:

Class Counsel

Jonathan K. Tycko
Katherine M. Aizpuru
TYCKO & ZAVAREEI LLP
1828 L Street, N.W., Suite 1000
Washington, D.C. 20036
Ph.: (202) 973-0900
Fax: (202) 973-0950

Geoffrey G. Bestor
The Bestor Law Firm
187 Hockanum Road
Hadley, MA 01035
Ph: (240) 463-8503

Defense Counsel

Mark D. Lonergan
Severson & Werson, P.C.
One Embarcadero Center, Suite 2600
San Francisco, CA 94111
Telephone: (415) 398-3344
Facsimile: (415) 956-0439

13. The objection shall contain all of the following information: 1) the objecting Settlement Class Member's full name, current address, and telephone number; (2) the last four digits of his or her loan number and/or the objector's Claim ID as set forth on the Postcard Notice and Email Notice; (3) a statement of the position the objector wishes to assert, including the factual and legal grounds for the position; (4) the identity of any witnesses that the objector may call in connection with his or her objection and a summary of their testimony; (5) the name(s) of any attorney(s) representing the objector; and (6) the name, court, and docket number of any class action litigation in which the objector has previously appeared as an objector or provided legal

assistance with respect to an objection; (7) the name, court, and docket number of any class action litigation in which the objector's attorney(s) have previously appeared as objectors or provided legal assistance with respect to an objection; (8) copies of all documents that the objector wishes to submit in support of his or her position; and (9) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class.

14. The Court orders that any attorney hired by a Settlement Class Member for the purpose of objecting to this Settlement shall file with the Clerk of the Court the written objection by the deadline specified in paragraph 8 above as well as file a notice of intention to appear at the Final Approval Hearing no later than 100 days after the preliminary approval motion is granted.

15. Any Settlement Class Member who fails to timely file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Order and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

16. If the Settlement is finally approved, all Settlement Class Members who have not filed a timely and proper Request for Exclusion shall release the Released Persons from all claims described in Section 8 of the Settlement Agreement.

17. The Court preliminarily enjoins all Settlement Class Members unless and until they have timely excluded themselves from the Settlement Class from: (i) filing, commencing, prosecuting, intervening in, promoting or participating (as class members or otherwise in) as any jurisdiction or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action; or (ii) 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.

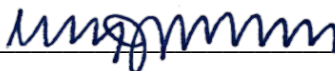
18. This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become Final (as defined in the Settlement Agreement), pursuant to the terms of the Settlement Agreement; or (ii) the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement for any reason. In such event, and except as provided therein, the proposed Settlement and Settlement Agreement shall become null and void and be of no further force and effect; neither the Settlement Agreement nor this Order shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses in the Action.

19. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, or liability, or by or against Plaintiff or the Settlement Class Members that their claims lack merit or that the relief requested in this Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses they may have.

20. The Court authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

IT IS SO ORDERED.

Dated: August 19, 2020



TIMOTHY J. SULLIVAN
UNITED STATES MAGISTRATE JUDGE