

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT Jun 25, 2018
EASTERN DISTRICT OF WASHINGTON
SEAN F. MCAVOY, CLERK

VALERIE RHODES, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a National Banking
Association,

Defendant.

No. 2:17-CV-0093-SMJ

ORDER GRANTING UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT

Before the Court, without oral argument, is Plaintiff Valerie Rhodes's Unopposed Motion for Preliminary Approval of Class Settlement, ECF No. 59. Plaintiff asks the Court to (1) grant preliminary approval of the settlement; (2) conditionally certify the proposed settlement class; (3) appoint class counsel and a class representative; and (4) approve a class administrator. Plaintiff advises the Court that the parties have agreed, subject to final approval by this Court following notice to the proposed Settlement Class and a hearing, to settle this action on the terms and conditions set forth in the Settlement Agreement and Release of Claims (the "Agreement"). ECF No. 60, Ex. F.

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1 The Court has reviewed the Agreement, as well as the files, records, and
2 proceedings to date in this matter. Based upon preliminary examination, it appears
3 to the Court that the Agreement is sufficiently fair, reasonable, and adequate to
4 warrant notice to the proposed Settlement Class. The Court further finds that the
5 Settlement Class should be certified for settlement purposes, and the Court will hold
6 a hearing after notice to the Settlement Class to determine whether to enter a
7 Settlement Order and Final Judgment in this action, based upon that Agreement.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiffs' Unopposed Motion for Preliminary Approval of Class
10 Settlement, **ECF No. 59**, is **GRANTED**.

11 2. The terms of the Agreement are hereby incorporated as though fully
12 set forth in this Order. Capitalized terms shall have the meanings attributed to them
13 in the Agreement.

14 3. *Preliminary Approval of Proposed Settlement.* The Agreement is
15 preliminarily approved as fair, reasonable, and adequate. The Court finds that (a)
16 the Agreement resulted from extensive arm's-length negotiations between the
17 parties and their counsel, and (b) the Agreement is sufficient to warrant notice
18 thereof to members of the Settlement Class and the Settlement Hearing described
19 below.

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1 **4. Class Certification for Settlement Purposes Only.**

2 **A.** Pursuant to Federal Rule of Civil Procedure 23(b)(3), the Court,
3 for settlement purposes only, conditionally certifies the following Settlement Class:

4 All Citizens of Washington State

- 5 (a) who own or owned real proper in Washington State subject
6 to a loan that was in default;
7 (b) which property, within the applicable statute of limitations,
8 was entered upon by Wells Fargo and/or its agents prior to
9 the completion of any judicial or non-judicial foreclosure;
10 and
11 (c) Which entry upon the property by Wells Fargo and/or its
12 agents was the proximate cause of damage to the homeowner
13 by: (i) damaging the homeowner's real or personal property;
14 and/or (ii) converting the homeowner's personal property or
15 belongings; and/or (iii) interfering with the homeowner's full
16 use and enjoyment of the home.

17 The Settlement Class is further defined by the Class List, which
18 includes

19 Individuals identified on the list produced by Wells Fargo on
20 April 20, 2018, and identified as "Revised Class List" with
Bates numbers "WF_Rhodes 026839-26842" and containing
4,013 unique loan numbers. "Settlement Class Members" will
include Class members who do not exclude themselves from the
Settlement.

B. In connection with the certification, the Court makes the
following preliminary findings:

- i. The Settlement Class satisfies Rule 23(a)(1) because the
Settlement Class appears to be so numerous that joinder of all members is
impracticable;

1 ii. The Settlement Class satisfies Rule 23(a)(2) because
2 there appear to be questions of law or fact common to the Settlement Class;

3 iii. The Settlement Class satisfies Rule 23(a)(3) because the
4 claims of the Representative Plaintiffs named in the caption appear to be typical of
5 the claims being resolved through the proposed settlement;

6 iv. The Settlement Class satisfies Rule 23(a)(4) because the
7 Representative Plaintiffs appear to be capable of fairly and adequately protecting
8 the interests of the above-described Settlement Class in connection with the
9 proposed settlement and because counsel representing the Settlement Class are
10 qualified, competent, and capable of prosecuting this action on behalf of the
11 Settlement Class.

12 v. The Settlement Class satisfies the requirements of Rule
13 23(b)(3) because, for purposes of settlement approval and administration, common
14 questions of law and fact appear to predominate over questions affecting only
15 individual Settlement Class Members and because settlement with the above-
16 described Settlement Class appears to be superior to other available methods for the
17 fair and efficient resolution of the claims of the Settlement Class. The Settlement
18 Class appears to be sufficiently cohesive to warrant settlement by representation.

19 C. In making the foregoing findings, the Court has exercised its
20 discretion in conditionally certifying a Settlement Class.

1 **5. *Representative Plaintiff.*** For settlement purposes only, the Court
2 hereby appoints Plaintiff Valerie Rhodes as Representative Plaintiff pursuant to
3 Rule 23 of the Federal Rules of Civil Procedure, and finds that, for settlement
4 purposes only, Ms. Rhodes will fairly and adequately protect the interests of the
5 Settlement Class.

6 **6. *Class Counsel.*** For settlement purposes only, the Court appoints
7 Jeffers, Danielson, Sonn & Aylward, P.S. as Class Counsel. For purposes of these
8 settlement approval proceedings, the Court finds that Class Counsel are competent
9 and capable of exercising their responsibilities as Class Counsel.

10 **7. *Class Administrator.*** The Court appoints Garden City Group, LLC as
11 the Class Administrator, which shall fulfill the class administration functions,
12 duties, and responsibilities of the Class Administrator as set forth in the Agreement
13 and this Order.

14 **8. *Settlement Hearing.*** A final approval hearing (the “Settlement
15 Hearing”) shall be held before this Court on **December 18, 2018 at 10:30 a.m., in**
16 **Spokane**, as set forth in the Class Notice (described in Paragraph 9 below), to
17 determine whether the Agreement is fair, reasonable, and adequate, and should be
18 given final approval. Papers in support of final approval of the Agreement and Class
19 Counsel’s application for an award of attorneys’ fees and costs, and for a service
20 award to the Representative Plaintiff (the “Fee and Cost Application”) shall be filed

1 with the Court according to the schedule set forth in Paragraph 17, below. The Court
2 may postpone, adjourn, or continue the Settlement Hearing without further notice
3 to the Settlement Class. After the Settlement Hearing, the Court may enter a
4 Settlement Order and Final Judgment in accordance with the Agreement (the “Final
5 Judgment”), which will adjudicate the rights of the Settlement Class Members with
6 respect to the claims being settled.

7 **9. Class Notice.** The Court approves the form and content of the notices
8 substantially in the forms provided to the Court, ECF No. 60, Ex. G, H. The parties
9 shall comply with the notice requirements of Section VIII of the Settlement
10 Agreement. In compliance with that Section, the Class Administrator shall cause
11 notice to be delivered in the manner set forth in the Agreement to all Settlement
12 Class Members who can be identified with reasonable effort. Notice sent by U.S.
13 Mail shall be substantially in the form attached as Exhibit G to ECF No. 60. A Long-
14 Form Notice substantially in the form attached as Exhibit H to ECF No. 60 shall be
15 made available on the Settlement Website. All other forms of notice shall be in
16 substantially the forms described in Section VIII, Paragraph 4 of the Agreement.

17 **10. Filing of CAFA Notice.** Before the Settlement Hearing, the Defendant
18 shall file with the Court information regarding their compliance with the notice
19 provisions of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

1 **11. Findings Concerning Class Notice.** The Court finds that the class
2 notice and the manner of its dissemination described in Paragraph 9 above and
3 Section VIII of the Settlement Agreement constitutes the best practicable notice
4 under the circumstances and is reasonably calculated, under all the circumstances,
5 to apprise Settlement Class Members of the pendency of this action, the terms of
6 the Agreement, and their right to object to or exclude themselves from the
7 Settlement Class. The Court finds that the notice plan is reasonable, that it
8 constitutes due, adequate and sufficient notice to all persons entitled to receive
9 notice, and that it meets the requirements of due process, Rule 23, and any other
10 applicable laws.

11 **12. Exclusion from Settlement Class.** Each Settlement Class Member
12 who wishes to exclude himself or herself from the Settlement Class and follows the
13 procedures set forth in this Paragraph shall be excluded. Any potential member of
14 the Settlement Class may exclude themselves by advising the Class Administrator
15 either in writing, or through the Settlement Website with appropriate validation and
16 verification information, no later than the Exclusion Deadline that they do not want
17 to be a class member. All such writings must be signed and include the name, address
18 and telephone number of the individual opting out, as well as evidence of the
19 person's membership in the Class and a statement clearly indicating the person's
20 desire to be excluded from the Settlement Class. If mailed, the request for exclusion

1 must be postmarked no later than the Exclusion Deadline. All persons in the
2 Settlement Class will be bound by the Settlement and judgments of this Court in the
3 Action unless they exclude themselves in writing by the Exclusion Deadline. The
4 names of all such excluded individuals shall be attached as an exhibit to any Final
5 Judgment.

6 **13. *Right to Terminate Agreement.*** Plaintiffs and the Defendant will each
7 have the right to unilaterally terminate the Agreement by providing written notice
8 of its election to do so to all Parties within fourteen (14) calendar days of any of the
9 occurrences stated in Section XIII. In addition, if more than two hundred (200)
10 Class Members request exclusion from the Settlement Class, then the Defendant
11 may, in its sole discretion, notify Class Counsel in writing that it has elected to
12 terminate the Agreement, effective upon the giving of such notification. To be
13 effective, such notice must comply with the requirements set out in Section XIII,
14 Paragraph 2 of the Agreement.

15 **14. *Claims Procedures.*** The Court approves the claims procedures set
16 forth in Section VII of the Agreement.

17 **15. *Costs of Class Notice and Claims Processing.*** Within thirty (30)
18 calendar days after entry of the Preliminary Approval Order, Defendant will remit
19 to the Class Administrator portion of the Settlement Fund sufficient to cover
20 expenses relating to administration of the Settlement Agreement. Thereafter, on the

1 Effective Date, the Defendant shall remit the remaining balance of the Settlement
2 Fund to be held in escrow in a non-interest bearing account. If the Settlement is
3 terminated for any cause, the Settlement Fund will be returned to the Defendant by
4 the Class Administrator, less any amounts already expended for notice or
5 administration.

6 **16. *Objections and Appearances.***

7 **A. *Written Objections.*** Any Settlement Class Member who has not
8 timely submitted a written request for exclusion from the Settlement Class, and thus
9 is a Settlement Class Member, may object to the fairness, reasonableness, or
10 adequacy of the Agreement, or the Fee and Cost Application. Any Settlement Class
11 Member who wishes to object to the Settlement, must follow the directions in the
12 Class Notice and file a written objection with the Court by the Objection Deadline.
13 The Objection Deadline is sixty (60) calendar days after the Settlement Notice Date,
14 as defined in Section II, Paragraph 28 of the Agreement. The objection must fully
15 comply with the requirements set out in Section X of the Agreement. All Objections
16 must be signed by the person(s) making the objection and by any co-borrower(s)
17 and provide the objector's name, address, and telephone number, evidence of the
18 Settlement Class Member's membership in the Settlement Class, and the reason(s)
19 for the objection.

1 **B. Appearance at Settlement Hearing.** Any objecting Settlement
2 Class Member who wishes to address the Court at the Settlement Hearing must
3 indicate his or her intent to do so by filing a notice of appearance with the Court no
4 later than ten (10) days before the Final Approval Hearing. Any member of the
5 Settlement Class who fails to comply with the requirements in Section X, Paragraph
6 2 of the Agreement shall waive and forfeit any and all rights to appear and/or object
7 separately and shall be bound by the terms of the Settlement Agreement and the
8 order and judgments of this Court.

9 **C. Fee and Cost Application.** Class Counsel shall file a Fee and
10 Cost Application, together with all supporting documentation, within thirty (30)
11 days of the Effective Date.

12 **17. Dates of Performance.** In summary, the dates of performance are as
13 follows:

14 **A.** Class Notice will be provided to the Settlement Class by the
15 Settlement Notice Date, which shall be no later than seventy (70) days following
16 the entry of this Order;

17 **B.** Representative Class Counsel's Fee and Cost Application, and
18 all supporting materials, shall be filed no later than thirty (30) days after Settlement
19 Notice Date;

1 **C.** Settlement Class Members who desire to be excluded shall mail
2 requests for exclusion postmarked within sixty (60) calendar days after the
3 Settlement Notice Date;

4 **D.** All objections to the Agreement or the Fee and Cost Application
5 shall be filed and served within sixty (60) after the Settlement Notice Date;

6 **E.** Representative Plaintiff's final approval motion, responses to
7 objections, and all supporting materials, shall be filed no later than fourteen (14)
8 calendar days prior to the Final Approval Hearing.

9 **F.** The Settlement Hearing shall be held on December 18, 2018, at
10 10:30 a.m., in Spokane.

11 **18. *Effect of Failure to Approve the Agreement.*** In the event the
12 Settlement Agreement is not approved or does not become final, then the following
13 shall apply:

14 **A.** All orders and findings entered in connection with the
15 Agreement shall become null and void and have no further force and effect, shall
16 not be used or referred to for any purposes whatsoever, and shall not be admissible
17 or discoverable in any other proceeding;

18 **B.** Nothing contained in this Order is, or may be construed as, any
19 admission or concession by or against Defendants or Representative Plaintiffs on
20 any point of fact or law, including, but not limited to, factual or legal matters relating

1 to any effort to certify this case as a class action for purposes of considering
2 settlement approval; and

3 C. Nothing in this Order or pertaining to the Agreement shall be
4 used as evidence in any further proceeding in this case, including, but not limited
5 to, motions or proceedings pertaining to treatment of this case as a class action.

6 **19. *Discretion of Counsel.*** Counsel are hereby authorized to take all
7 reasonable steps in connection with approval and administration of the Settlement
8 not materially inconsistent with this Order or the Agreement, including, without
9 further approval of the Court, making minor changes to the content of the Class
10 Notice that they jointly deem reasonable or necessary.

11 **20. *Stay of Proceedings Pending Approval of the Settlement.*** All
12 proceedings before the Court are stayed pending final approval of the settlement,
13 except as may be necessary to implement the settlement or comply with the terms
14 of the Agreement. If the Settlement is terminated or final approval does not occur,
15 the stay will be immediately terminated.


16 **21. *Injunction Against Asserting Released Claims Pending Settlement***
17 ***Approval.*** Pending final determination of whether the settlement should be
18 approved, Representative Plaintiffs, all Settlement Class Members, and any person
19 or entity allegedly acting on behalf of Settlement Class Members, either directly,
20 representatively or in any other capacity, are preliminarily enjoined from

1 commencing or prosecuting against the Released Parties any action or proceeding
2 in any court or tribunal asserting any of the Released Claims, provided, however,
3 that this injunction shall not apply to individual claims of any Settlement Class
4 Members who timely exclude themselves in a manner that complies with this Order.
5 This injunction is necessary to protect and effectuate the settlement, this Order, and
6 the Court's flexibility and authority to effectuate this settlement and to enter
7 judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to
8 protect its judgments pursuant to 28 U.S.C. § 1651(a).

9 **22. *Reservation of Rights and Retention of Jurisdiction.*** The Court
10 reserves the right to adjourn or continue the date of the Settlement Hearing without
11 further notice to Settlement Class Members, and retains jurisdiction to consider all
12 further applications arising out of or connected with the settlement. The Court may
13 approve or modify the settlement without further notice to Settlement Class
14 Members.

15 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
16 provide copies to all counsel.

17 **DATED** this 25th day of June 2018.

18 
19 SALVADOR MENDEZ, JR.
20 United States District Judge

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