

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

JOSEPH AND KAREN SOMERVILLE, *et al.*, *

Plaintiffs, *

v. *

Civil Action No.: PJM-19-490

WEST TOWN BANK & TRUST, *

Defendant. *

* * * * *

~~PROPOSED~~ ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT OF ALL CLAIMS ASSERTED AGAINST
WEST TOWN BANK & TRUST

UPON CONSIDERATION of the Motion for Preliminary Approval of Class Action Settlement of All Claims and accompanying Memorandum, ECF No. 133 (the "Motion"), in the above-captioned case, filed herein by Plaintiffs and Class Representatives Joseph and Karen Somerville, III, David and Jamie McCranie, Randolph Whitley, and Mark and Susan Kline (together, the "West Town Plaintiffs" or "Class Representatives"), it is hereby ORDERED, this 17 day of October, 2022, that:

1. The Preliminary Approval Motion is GRANTED.
2. The Court preliminarily finds, pursuant to Fed. R. Civ. P. 23(e), that the settlement reflected in the Settlement Agreement dated as of September 7, 2022 (the "Settlement" or "Settlement Agreement") and filed as Exhibit 1 to Plaintiffs' Memorandum of Law Supporting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 83-1, constitutes a fair, reasonable, and adequate settlement of disputed and complex claims.
3. The Court further finds that the Settlement Class is defined as:

All individuals in the United States who were borrowers on a mortgage loan obtained from West Town Bank & Trust, a/k/a West Town Savings Bank, for which All Star Title, Inc., provided a settlement service, as identified in Section 1100 on the borrower's HUD-1 or as appearing in the loan processing records of All Star Title, between January 1, 2010 and December 31, 2015. Exempted from this class are (i) any person who, during the period of January 1, 2010 through December 31, 2015, was an employee, officer, member and/or agent of West Town Bank & Trust, a/k/a West Town Savings Bank, or All Star Title, Inc.; (ii) any judicial officer who handles this case, and the immediate family members of such judicial officer(s); and/or (iii) any person who elected to be excluded from the West Town Class and the Litigation in accordance with the Court's November 23, 2021 Order, approving the class notice and notice plan (ECF No. 122).

(hereinafter the "West Town Settlement Class"). The Settlement Class is virtually identical to the West Town Class certified by this Court at ECF No. 90 (as amended by ECF No. 93) and meets all of the requirements of Fed. R. Civ. P. 23 for the reasons provided in that May 4, 2021 Order which is incorporated herein.

4. The Court finds that the Settlement was reached through an arms-length negotiation after due investigation by Plaintiffs' Counsel. The proposed Settlement comes after disputed, contentious and protracted motion practice, the completion of substantial discovery, including substantial written discovery, significant third party discovery and deposition testimony, and follows protracted settlement negotiations including a failed settlement conference on November 3, 2021. All of these factors indicate that the proposed Settlement was arrived at in good faith, from arms-length negotiations free from collusion.

5. The Court preliminary finds that the Settlement provides significant benefits for the Settlement Class as described in Section 7 of the Settlement Agreement. The amount of the Common Fund and the estimated Settlement Benefits for each Settlement Class member are

substantial and provide immediate significant recovery to the Settlement Class without the risk of continued litigation, trial and certain appeal.

6. The Court appoints The Casey Group as the Settlement Administrator. The Settlement Administrator shall undertake those duties as are defined in Section 10 of the Settlement Agreement, including undertaking address verifications for members of the Settlement Class, conducting appropriate research to correct incorrect addresses and timely mailing second notices where required, sending the Notice pursuant to Section 11 of the Settlement Agreement, accepting and reporting on Requests for Exclusion received by the Exclusion Deadline, opening an account for the deposit of the Common Fund, remitting payment from the Common Fund for Settlement Benefits and other types of payments payable to eligible members of the Settlement Class, Class Representatives, and Class Counsel, preparing declarations and affidavits necessary to present to the Court with respect to the Settlement Administrator's duties and fulfillment thereof in support of final approval of the Settlement, preparing and issuing applicable tax documents, and such other duties as are provided for under the Settlement Agreement. The Settlement Administrator will be retained by Class Counsel and the reasonable fees and expenses of the Settlement Administrator will be paid from the Escrowed Funds deposited into the Common Fund by Defendant pursuant to Section 6.2 and 10.2 of the Settlement Agreement.

7. The Court finds that the Notice Plan proposed by the parties in Section 11 of the Settlement Agreement, which requires that a Notice to be delivered by first class U.S. mail to each Settlement Class Member's last known address available for the primary borrower and posted on the Settlement Website, constitutes the best practicable notice of the proposed Settlement and is thus approved by the Court under Fed. R. Civ. P. 23(e).

8. The Court hereby approves the proposed Notice for mailing to Settlement Class Members that is attached to the Settlement Agreement as Exhibit A, with the instruction to the Settlement Administrator to insert the Objection Deadline, Exclusion Deadline, and date and location of the Final Fairness Hearing as specified therein and as established in Sections 16 and 20 of this Order.

9. Members of the Settlement Class shall have the right to opt-out of the Settlement Class by sending a written Request for Exclusion from the Settlement Class to the Settlement Administrator at the address listed in the Notice. Requests for Exclusion must be signed by the person requesting exclusion from the Class and any co-borrower(s) (unless there is a certification that any co-borrower not signing is deceased or disabled such that they cannot sign) on their West Town mortgage loan and must include the requestor's full name and current address, the full name and current address of any co-borrower(s) on their West Town mortgage loan, the address of the property which secured their West Town mortgage loan, and an affirmation, under penalty of perjury, that the requestor seeking to be excluded from the Class and their co-borrower(s), if any, wish to opt-out of the Class and understand that, in doing so, they will not be entitled to any Settlement Benefits under the Settlement.

10. A person who submits a valid and timely Request for Exclusion shall not be bound by the Settlement Agreement, or any Final Approval Order and Judgment relating thereto. Such persons also will not be entitled to receive any Settlement Benefits under the Settlement Agreement.

11. Any Settlement Class member who does not properly and timely submit a Request for Exclusion shall be automatically included in the Settlement Class and shall be bound by all the terms and provisions of the Settlement Agreement, this Order Granting Preliminary Approval of

Settlement, and any Final Approval Order and Judgment, whether or not such Settlement Class member received actual notice or objected to the Settlement. Those Settlement Class members who do not properly and timely submit Requests for Exclusion by the Exclusion Deadline are hereby preliminarily enjoined from filing suit or asserting any claims, demands, and/or counterclaims with respect to matters released in Section 15 of the Settlement Agreement from the date of this Order until the entry of an Order by this Court granting Final Approval to the Settlement.

12. If more than five percent (5%) of the members of the West Town Settlement Class submit timely and valid requests for Exclusion, West Town shall have the option to withdraw from the Settlement upon written notice to the Court filed within fifteen (15) days of the Exclusion Deadline.

13. Settlement Class members who do not request to be excluded from the Settlement Class may object to the Settlement. Settlement Class members who choose to object to the Settlement must do so by filing a written objection with the Court at the address listed in the Notice and by mailing a copy thereof to the Parties' counsel. All Objections must be signed by the person(s) making the objection, or an attorney, legal guardian, or other person legally authorized to act on their behalf and must set forth in detail each component of the Settlement to which they object, the reasons for each such objection, and any legal authority that they wish the Court to consider in support thereof. Objections must also include the objector's full name and current address, the full name and current address of any co-borrower(s) on their West Town mortgage loan, the address of the property which secured their West Town mortgage loan, and an affirmation, under penalty of perjury, that the person on whose behalf the objection is filed and all

of their co-borrower(s), if any, object to the Settlement and intend to appear at the Final Fairness Hearing, at which time their Objections will be considered, if not previously withdrawn.

14. Any Settlement Class members who do not file a timely and adequate Objection in accordance with this Order waive the right to object or to be heard at Final Fairness Hearing and shall be forever barred from making any objection to the Settlement.

15. Those West Town Settlement Class Members who do not submit timely and valid Requests for Exclusion by the Exclusion Deadline are hereby preliminarily enjoined from filing suit or asserting any claims, demands, and/or counterclaims with respect to matters released in Section 15 of the Settlement Agreement from the date of this Order until the entry of an Order by this Court granting Final Approval to the Settlement or West Town's withdrawal from the Settlement pursuant to Section 12 of this Order, whichever first occurs.

16. A Final Fairness Hearing on the Settlement will be held before this Court in Courtroom 4c at the United States District Court for the District of Maryland, 6500 Cherrywood Lane, Greenbelt, MD 20770, on JAN. 18, ²⁰²³ 2022 at 11 a.m./~~p.m.~~ or such other later date or other location as may be set by the Court and reflected on the online Docket for this case. The Final Fairness Hearing may also be held telephonically, by videoconferencing or other method reasonable under the circumstances and pursuant to any Standing Orders of the Court. Should the Final Fairness Hearing be held by any method other than in person hearing, the Court shall issue notice to the Parties who will in turn cause the Settlement Administrator to publish on the Settlement Website instructions for the Settlement Class Members attendance and participation in the Final Fairness Hearing in accordance with any applicable provisions of the Settlement Agreement. PJ

17. At the Final Fairness Hearing, the Court will consider, *inter alia*, the following: (a) any timely objections to the fairness, reasonableness, and adequacy of the Settlement; (b) the dismissal with prejudice of this action as to Defendant West Town; (c) whether Class Counsel's petition for attorneys' fees and expenses should be granted and any objections or opposition thereto; (d) whether the Class Representatives' petition for a service award should be granted and any objections or opposition thereto; (e) whether to grant final approval to the Settlement and to the release of claims as set forth in Section 15 of the Settlement Agreement; (f) whether to permanently enjoin all Settlement Class members who have not submitted timely and valid Requests for Exclusion from filing suit or asserting any claims, demands, and/or counterclaims with respect to matters released in Section 15 of the Settlement Agreement; and (g) whether the Court should enter an order expressly determining that there is no just reason for delay and expressly directing that any judgment by the Court approving the Settlement should be deemed a final judgment under Fed. R. Civ. P. 54(b) with respect to all Released Claims as defined in Section 15 of the Settlement.


18. In the event that the Settlement does not receive Final Approval or the Orders of the Court approving the Settlement do not reach Finality, the Settlement shall terminate and be deemed of no effect, and all negotiations, filings, documents, orders, and proceedings relating thereto shall not be discoverable or admissible in the Litigation or otherwise, and shall be without prejudice to the rights of the Parties hereto, who shall be restored to their respective positions and retain all of their rights and defenses existing immediately prior to the execution of this Settlement. However, any provisions of the Settlement Agreement which expressly state that they survive termination shall remain in effect as to the named Plaintiffs and the Defendant.

19. Counsel for the Parties are directed to maintain in confidence and shall not produce to any persons or entities who are not a party to the Settlement (other than the Settlement Administrator), any personal, confidential, or financial information relating to Settlement Class members now or hereafter acquired by them absent a specific Court order requiring the production of such information, after using their best efforts to resist the production thereof, and then only if such information is redacted to the extent feasible. This does not restrict Defendant from submitting information required by statute to be included in notices to government officials pursuant to the Class Action Fairness Act.

20. The following dates and deadlines are established by the Court in connection with the Settlement, which may be modified by the court for good cause:

- Deadline for Completion of the Notice Plan: 21 days from the date of this Order;
- Deadline for Requests of Exclusion: 45 days after the date the Notice is mailed to the Settlement Class;
- Deadlines for the filing of Objections: 45 days after the date the Notice is mailed to the Settlement Class;
- Deadline for the filing of the Petition for Class Counsel's Fees and Costs: no later than 21 days before the Final Fairness Hearing;
- Deadline for the filing of the Petition for Class Representatives' Service Awards: no later than 21 days before the Final Fairness Hearing;
- Deadline for filing of the Motion Seeking Final Approval of Settlement: not less than 21 days prior to the Final Fairness Hearing; and
- Deadline for serving the CAFA Notice: within 10 days after the filing of the Motion for Preliminary Approval.

- Final Fairness Hearing: not less than 100 days after the filing of the Motion for Preliminary Approval.



Hon. Peter J. Messitte
United States District Judge