

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

JOSEPH AND KAREN SOMERVILLE, *et al.*,

*Plaintiffs,*

v.

Case No.: 8:19-cv-00490-PJM

WEST TOWN BANK & TRUST,

*Defendant.*

  
PROPOSED ORDER

IN CONSIDERATION of the Unopposed Motion for Final Approval of Class Action Settlement Agreement (ECF No. 140), the Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Service Awards (ECF No. 141), and the supporting Memoranda and documents referenced therein, to which there was no opposition, having considered the entirety of the record in this case, and having held a final fairness hearing on the Settlement, the Court hereby finds on this 18 day of Jan, 2023, that:

1. The class action settlement of all claims asserted against West Town Bank & Trust ("West Town"), as reflected in the Settlement Agreement dated as of September 7, 2022, and filed at ECF No. 135-2, constitutes a fair, reasonable, and adequate settlement of disputed and complex claims and is hereby given final approval under Fed. R. Civ. P. 23(e).
2. The Settlement was reached through arms-length negotiation after due investigation and discovery by Plaintiffs' Counsel, provides significant and certain benefits for the

Settlement Class as described in Sections 6 and 7 of the Settlement Agreement, and protects and serves the interests of the members of the Settlement Class.

I. **THE SETTLEMENT CLASS, CLASS REPRESENTATIVES, AND CLASS COUNSEL**

3. In the Preliminary Approval Order, this Court preliminarily certified the following Settlement Class:

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 Start 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 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.

(the "Settlement Class").

4. For the same reasons as set forth in the Court's Preliminary Approval Order (ECF No. 137) in support of preliminary certification, the Settlement Class is hereby certified as a final Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3). For purposes of the Settlement, the Court finds that each of the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied.
5. This Court previously appointed Plaintiffs Joseph and Karen Somerville, Mark and Susan Kline, David and Janie McCranie, and Randolph Whitley, as the Class Representatives of the Settlement Class and appointed Michael Paul Smith and Melissa L. English of the law firm Smith, Gildea & Schmidt, LLC, and Timothy F. Maloney and Veronica B. Nannis of the law firm Joseph, Greenwald & Laake, P.A., as Settlement Class Counsel.

6. The requested Service Awards to the Class Representatives, which total \$20,000, are hereby approved and will be paid from the Common Fund that is to be funded by West Town as provided in Section 6 of the Settlement Agreement; they are unopposed, fair, and reasonable, given the Class Representatives' service in the prosecution and settlement of the claims asserted against West Town in this case.
7. Class Counsel are entitled to an award of attorneys' fees in the amount of one million and nine hundred and ninety thousand dollars (\$1,990,000) and expenses incurred in the prosecution and settlement of the Claims against West Town in an amount not to exceed one hundred and sixty thousand dollars (\$160,000) to be paid from the Common Fund that is to be funded by West Town as provided in Section 6 of the Settlement Agreement. The Court finds the foregoing fees and expenses to be fair and reasonable, given Class Counsels' service in the prosecution and settlement of the claims asserted against West Town in this case, the settlement obtained, and all the factors considered by the Court.

## II. CLASS NOTICE

8. The record shows, and this Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order. The Court finds that the Notice Plan constitutes: (i) the best notice practicable to the Settlement Class under the circumstances; (ii) notice that was reasonably calculated, under the circumstances, to put the Settlement Class on notice of this litigation and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves

from the Settlement Class; (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.

9. Due and adequate notice of the proceedings having been given to the Settlement Class, and a full opportunity having been offered to Settlement Class Members to participate in the Final Approval Hearing, and there being no requests for exclusion received, it is hereby determined that all Settlement Class Members are bound by this Final Approval Order and the Final Judgment.
10. The Settlement Administrator has duly and timely completed the Notice Plan described in the Settlement Agreement by the timely mailing of the Court-approved Notices to the members of the Settlement Class and by establishing the Settlement Website, and by attempting to locate and re-mail notices to all persons whose initial mailings were returned undeliverable. The Court finds that the reach rate of the notice program as reflected in the Declaration of the Settlement Administrator was extraordinarily high and well within the range of acceptability.
11. There have been no Objections to the Settlement, and no Exclusion Requests have been submitted by any member of the Settlement Class.
12. West Town has complied with 28 U.S.C. § 1715 by sending a Notice of Proposed Class Action Settlement to all required federal agencies under the Class Action Fairness Act, and none of the recipients of that Notice have filed objections to the Settlement.

### **III. FINAL APPROVAL OF THE SETTLEMENT**

13. This Court finds the Settlement reasonable because (i) the Parties reached the Settlement after vigorous motion practice and significant discovery; (ii) the negotiations were extensive, contentious, and arms-length; (iii) there was significant pre-suit investigation and discovery; and (iv) the proponents of the Settlement are represented by experienced counsel.
14. This Court further finds that the following requirements continue to be met: (a) the number of Settlement Class Members is approximately 2,195 and is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class Members; (c) Plaintiffs' claims are typical of the claims of the Settlement Class Members they seek to represent for purposes of the Settlement; (d) Plaintiffs and Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so; (e) questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action provides a fair and efficient method for settling the controversy under the criteria set forth in Rule 23.
15. Accordingly and pursuant to Fed. R. Civ. P. 23(e), this Court hereby finally approves in all respects the certification of the Settlement Class and the Settlement, and finds that the Settlement, the benefits to the Settlement Class Members, and all other aspects of the Settlement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and within a range that responsible and experienced attorneys could accept considering all relevant risks and factors and the relative merits of Plaintiffs' claims and West Town's defenses, and are in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and

the Class Action Fairness Act. Therefore, the Settlement shall be consummated in accordance with its terms and provisions.

16. In making all of its findings, this Court has exercised its discretion in certifying the Settlement Class and granting final approval to the Settlement based upon the entirety of the record, including all facts and circumstances of this litigation as presented to the Court in the submissions in support of approval of the Settlement.

**IV. DISMISSAL OF CLAIMS AND RELEASE, WAIVER, AND COVENANT NOT TO SUE**

17. The Plaintiffs and members of the Settlement Class, and all Persons acting on behalf of, or in concert or participation with such Plaintiffs or Settlement Class Members (including but not limited to the Releasing Parties), are hereby declared to be bound by the terms of the Release, Waiver, and Covenant Not to Sue set forth in Section 15 of the Settlement Agreement, and are hereby deemed to have released, remised, resolved, waived, and forever discharged West Town, its predecessors, successors, assigns, parents, subsidiaries, affiliates, related entities, vendors, and all of their respective past and present agents, directors, officers, employees, shareholders, insurers, representatives, and attorneys of and from any and all of the Released Claims as defined in Section 15.2 of the Settlement Agreement.

**V. OTHER PROVISIONS**

18. The Casey Group, Ltd., was appointed as the Settlement Administrator under the Preliminary Approval Order.
19. The Settlement Administrator shall continue to perform and comply with all administration duties ascribed to it in the Settlement Agreement and this Final Approval Order.

20. Settlement Class Counsel and Counsel for Defendants are hereby authorized to use all reasonable procedures in connection with administration of the Settlement that are not materially inconsistent with this Final Approval Order or the Settlement Agreement.

ACCORDINGLY, IT IS HEREBY ORDERED, THAT:

21. The Motion for Final Approval of Settlement of All Claims Asserted Against West Town is GRANTED;
22. The Plaintiffs Petition for Class Representatives' Service Awards (ECF No. 141) is GRANTED. Specifically, Class Representatives Joseph and Karen Somerville will jointly receive a Service Award of \$5,000, Class Representatives Mark and Susan Kline will jointly receive a Service Award of \$5,000, Class Representatives David and Janie McCranie will jointly receive a Service Award of \$5,000, and Class Representative Randolph Whitley will receive a Service Award of \$5,000. The Service Awards shall be paid from the Common Fund that is to be funded by West Town as provided in Section 6 of the Settlement Agreement;
23. Class Counsels' Petition for Attorneys' Fees and Expenses (ECF No. 141) is GRANTED. Class Counsel shall be awarded attorneys' fees in the amount of one million and nine hundred and ninety thousand dollars (\$1,990,000) and reimbursement of out-of-pocket expenses in the amount of one hundred and sixty thousand dollars (\$160,000). The award of attorneys' fees and expenses shall be paid from the Common Fund that is to be funded by West Town as provided in Section 6 of the Settlement Agreement;
24. West Town shall provide to the Settlement Administrator the amount necessary to fund the Common Fund as provided in Section 6 of the Settlement Agreement.

25. From the funds provided by West Town, the Settlement Administrator shall remit therefrom the Settlement Benefits payable to the respective Settlement Class Members in accordance with the Settlement Agreement; the Service Awards to the Class Representatives as stated in Paragraph 22 herein; and the attorneys' fees and expenses as stated in Paragraph 23 herein. Any funds remaining after payment of Settlement Benefits shall be returned to West Town by the Settlement Administrator in accordance with the Settlement Agreement;
26. All claims asserted in this action against West Town are hereby DISMISSED WITH PREJUDICE;
27. The Parties are hereby directed to implement and consummate the Settlement according to the terms and provisions of the Settlement Agreement;
28. The Plaintiffs and the members of the Settlement Class are hereby bound by the terms of the Release, Waiver, and Covenant Not to Sue set forth in Section 15 of the Settlement Agreement, and hereby PERMANENTLY ENJOINED from filing suit or asserting any claims, demands, and/or counterclaims with respect to matters released in Section 15 of the Settlement Agreement and deemed to have released, remised, resolved, waived, acquitted, and forever discharged West Town, its predecessors, successors, assigns, parents, subsidiaries, affiliates, related entities, vendors, and all of their respective past and present agents, directors, officers, employees, shareholders, insurers, representatives, and attorneys of and from any and all the Released Claims as defined in Section 15.2;
29. The Court finds there is no just reason for delay and that this Order shall be deemed a FINAL JUDGMENT against Defendant West Town under Rule 54(b) of the Federal Rules of Civil Procedure; and



30. Should the Parties to the Settlement Agreement or the members of the Settlement Class bound thereby fail to honor the terms of this Order, the non-breaching party may petition the Court of enforcement of this Final Judgment Order. The Court retains jurisdiction to enforce this Settlement.

Dated: 1/18/23

  
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Hon. Peter J. Messitte, United States District Judge