

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DONNA MOORE, FRENCHOLA HOLDEN
and KEITH MCMILLON, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

GMAC MORTGAGE, LLC, GMAC BANK
and CAP RE OF VERMONT, INC.,

Defendants.

Civil Action No. 2:07-cv-04296-PD

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED
MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF PLAN OF
ALLOCATION, APPOINTMENT OF CLASS REPRESENTATIVES, AND
APPOINTMENT OF LEAD CLASS COUNSEL AND CLASS COUNSEL, AND FOR
AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION COSTS,
AND CASE CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS**

Plaintiffs Donna Moore, Frenchola Holden and Keith McMillon (collectively, "Plaintiffs" or "Named Plaintiffs"), on behalf of themselves and all others similarly situated, by and through their undersigned counsel, respectfully submit this Supplemental Memorandum of Law in further support of their unopposed motions (1) for an Order Granting Final Approval of Class Action Settlement,¹ Certification of Settlement Class, Approval of Plan of Allocation, Appointment of

¹ All capitalized terms used throughout this motion shall have the meanings ascribed to them in the Settlement Agreement ("Settlement Agreement") filed with this Court on January 24, 2014 (*see* Dkt. No. 272-3) and attached as Exhibit 1 to the Declaration of Edward W. Ciolko in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, Approval of Plan of Allocation, Appointment of Class Representatives, and Appointment of Lead Class Counsel and Class Counsel, and Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Costs, and Case Contribution Awards for the Named Plaintiffs. *See* Dkt. No. 292.

Class Representatives, and Appointment of Lead Class Counsel and Class Counsel (the “Motion for Final Approval”) (Dkt. No. 290), and (2) For Award of Attorneys’ Fees, Reimbursement of Litigation Costs, and Case Contribution Awards for the Named Plaintiffs (the “Motion for Fees and Costs”) (Dkt. No. 291), both filed with the Court on August 6, 2014 (Dkt. Nos. 290, 291). Plaintiffs submit this Supplemental Memorandum to (a) update the Court with regard to the dissemination of the Class Notice, (b) inform the Court that there have been zero objections to the Settlement or attorneys’ fee request to date and eight (8) opt-out requests, representing six (6) Reinsured Loans² and (c) bring to the Court’s attention a recent declaration in support of the pending motion for final approval of the class action Settlement submitted by the Honorable Edward Cahn, who mediated the action (Dkt. No. 293).

I. ARGUMENT

A. Class Notice was Extremely Effective

As explained in the Memorandum in Support of the Motion for Final Approval (Dkt. No. 290-1), The Garden City Group (“GCG”), an experienced class action claims administrator, mailed 126,227 Class Notices to the Settlement Class on June 13, 2014. GCG has provided a supplemental declaration describing its efforts to disseminate the Class Notice since the filing of the Motion for Final Approval. *See* Supplemental Affidavit of GCG, executed September 15, 2014 (“Supplemental Affidavit”), attached hereto as Exhibit 1. To date, a total of 426 Class Notices addressed to Settlement Class Members have been returned by the United States Postal Service (USPS) as undeliverable as addressed but had forwarding addresses. *See* Exhibit 1 at ¶ 8.

² For purposes of distributing the Settlement Fund, a Class Member is a person or persons “obligated on a Reinsured Loan,” *see* Settlement Agreement, ¶ 1.6, but, the Class *size* – *i.e.* the “number” of individual payments to ultimately be made to the Class – is determined by the number of Reinsured Loans.

GCG promptly re-mailed the 426 undeliverable as addressed Class Notices to the forwarding addresses provided. *Id.* at ¶ 8. Thereafter, GCG conducted advanced address research for an additional 14,286 Settlement Class Members without forwarding addresses utilizing the Settlement Class Members' social security numbers, names, and prior addresses. *Id.* at ¶ 9. As a result, GCG located 11,388 updated addresses and promptly re-mailed Class Notices to those 11,388 updated addresses. *Id.* As of the date of the Supplemental Affidavit, 2,898 of the 11,388 re-mailed Class Notices have been returned as undeliverable for a second time. *Id.* at ¶ 9. Accordingly, to date, there are only 2,898 Class Notices that were not successfully delivered. *Id.* at ¶ 9. Thus, the individual Class Notice mailing program had over a **97.9%** success rate. *Id.* This rate is comparable to the success rate in the analogous matter of *Liguori, et al. v. Wells Fargo Bank, N.A.*, et al, No. 08-cv-00479 (E.D. Pa.) (98% notice success rate) and significantly higher than the notice success rate in the analogous matter of *Alston v. Countrywide Fin. Corp.*, No. 07-cv-03508 (E.D. Pa.) (88% success rate).

Additionally, the Class Notice, Second Amended Class Action Complaint, Settlement Agreement, and Settlement-related documents were published, along with other information, on the dedicated Settlement website – www.gmacpmisettlement.com – on June 13, 2014. To date, the website has received 6,487 hits. *See* Exhibit 1 at ¶ 12. Moreover, since June 13, 2014, GCG has also maintained a toll-free number with an Interactive Voice Response (“IVR”) system for Settlement Class Member inquiries wherein an automated attendant answers calls, and presents Settlement Class Members with a series of choices in response to basic questions, offers callers the opportunity to request that a Class Notice be sent to them, and also provides the option to leave a message for Class Counsel. To date, the IVR system has received 1,749 calls. *Id.* at ¶ 14.

Due to the over 97% success rate of the individual Class Notice mailing program, coupled

with the dedicated website and telephone number, Class Counsel believes the effectuation of Class Notice has, without doubt, satisfied the requirements of due process and FED. R. CIV. P. 23(e).

B. The Complete Absence of Objections and Small Number of Opt-Outs Further Support the Adequacy of the Settlement

As noted above, 126,227 Class Notices were disseminated to Settlement Class Members, and over 97% of the Class Notices were successfully delivered. In the Preliminary Approval Order, this Court set August 12, 2014 as the deadline by which any objection to the proposed Settlement and request for attorneys' fees or opt-out election was to be filed. *See* Dkt. No. 283 at ¶¶ 20 (Preliminary Approval Order); Dkt. No. 284 (Amended Preliminary Approval Order setting August 12, 2014 as the opt-out deadline). On August 1, 2014, per the request of Class Counsel, this Court extended the date by which any objection to any aspect of the Settlement should be filed up to and including September 17, 2014, the date of the Final Approval Hearing. Dkt. No. 289. The date to file opt-outs remained August 12, 2014. To date, *zero objections* have been filed in this Action and only eight (8) exclusion requests representing six (6) Reinsured Loans, *i.e.*, opt-outs, from the 122,963 Reinsured Loans have been filed. To the extent any objections are filed between the instant filing and the Final Approval Hearing, Plaintiffs shall address them with the Court at the Final Approval Hearing.

As courts within this District and Circuit have previously recognized, the absence of objections is a factor supporting the adequacy of a proposed settlement. *See, e.g., Hall v. Best Buy Co., Inc.*, 274 F.R.D. 154, 165 (E.D. Pa. 2011) (noting “that the absence of objections to this settlement support that finding” of reasonableness); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 460 (E.D. Pa. 2008) (reasoning the large number of Settlement Class members and lack of objections “weighs in favor of approval,” noting “[t]he attitude of class members toward the partial settlement of this action, as evidenced by the absence of objections, strongly militates a finding

that the settlement is fair and reasonable”); *Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining and Manufacturing Company)*, 513 F. Supp. 2d 322, 331 (E.D. Pa. 2007) (“This total absence of objections argues in favor of the proposed Settlement”).

This reasoning has also been extended to a request for attorneys’ fees. *See Briggs v. Hartford Financial Services Group, Inc.*, No. 07-cv-5190, 2009 WL 2370061, at *14 (E.D. Pa. July 31, 2009) (“Next, not a single objection to the requested fee award has been submitted. The requested amounts were described in detail in the notice mailed directly to class members. In these circumstances, the absence of objections to the fee request supports a finding that it is appropriate and reasonable.”). Here, Class Counsel informed potential Settlement Class Members in the Class Notice that it would seek up to 33 1/3% of the Class Settlement Amount in attorneys’ fees. Class Counsel in fact only requested 30% of the Settlement amount. Nevertheless, zero objections have been received in response to Class Counsel’s fee application.

Similarly, the small number of opt-out requests received is a factor that weighs favorably in support of the Settlement. *See, e.g., Fleisher v. Fiber Composites, LLC*, No. 12-cv-1326, 2014 WL 866441, at *11 (E.D. Pa. Mar. 5, 2014) (noting the “small number of objections, coupled with such a low opt-out rate, argues in favor of the proposed Settlement Agreement”); *McLennan v. LG Electronics USA, Inc.*, No. 10-cv-3604, 2012 WL 686020, at *6 (D.N.J. Mar. 2, 2012) (concluding that 107 opt-outs out of 418,411 class members favored approval of class action settlement); *Chakejian v. Equifax Information Services, LLC*, 275 F.R.D. 201, 212 (E.D. Pa. 2011) (concluding that a total of 9 opt-outs and objections out of 40,000 favored settlement).³ Hoping to discern the

³ The number of objections and opt-outs are frequently considered together. *See, e.g., In re Imprelis Herbicide Marketing, Sales Practice & Prod. Liability Litig.*, 296 F.R.D. 351 (E.D. Pa. 2013) (approving a settlement with twenty-four objections and 581 opt-outs from a potential class of 68,892 members); *In re Am. Bus. Fin. Servs. Inc.*, No. 05-cv-232, 2008 WL 4974782, at *6-7 (E.D. Pa. Nov. 21 2008) (approving

reason for their exclusion requests, Class Counsel attempted to reach each of the individuals who filed opt-out request, leaving telephone messages for six (6) of them. However, none of the individuals have returned Class Counsel's telephone messages.

Thus, Plaintiffs respectfully submit that the complete absence of objections and small number of opt-out requests are both strong support for the fairness, reasonableness, and adequacy of the Settlement as well as the requested attorneys' fees.

C. Judge Cahn's Declaration in Support of the Settlement Further Confirms its Fairness, Adequacy, and Reasonableness

As noted above, on September 11, 2014, Judge Cahn submitted a declaration in support of the Settlement. Dkt. No. 293. In his declaration, Judge Cahn, who served as a federal judge of the United States District Court for the Eastern District of Pennsylvania for more than twenty years, including several years as Chief Judge, and also served as the neutral mediator in the instant action, noted "I can say without hesitation that the settlement discussions were unquestionably conducted in good faith and at arm's length." Dkt. No. 293 at ¶ 7. Accordingly, Judge Cahn opined, "[i]t is my opinion that the \$6.25 million common fund settlement provides a substantial recovery for the class." *Id.* at ¶ 8. Moreover, Judge Cahn provides his opinion that "Plaintiffs' request of 30% of the common fund in [attorneys'] fees is...fair and reasonable." *Id.* at ¶ 9. Plaintiffs respectfully submit that the declaration by Judge Cahn thus provides further support for granting final approval of the proposed Settlement and awarding the requested attorneys' fees.

a settlement with thirty-two written objections, seven objections voiced at the final hearing and eighty opt-outs from a class of 29,000 members)).

II. CONCLUSION

For the reasons set forth herein, and in Plaintiffs' prior submissions in connection with the Settlement, Plaintiffs respectfully request that the Court grant their unopposed Motions for Final Approval and for Fees and Costs.

Dated: September 15, 2014

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

/s/ Edward W. Ciolko

Edward W. Ciolko, Esq.
Terence S. Ziegler, Esq.
Donna Siegel Moffa, Esq.
Amanda R. Trask, Esq.
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

**BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP**

Alan R. Plutzik, Esq.
2125 Oak Grove Blvd., Suite 120
Walnut Creek, CA 94598
Telephone: (925) 945-0770
Facsimile: (925) 945-8792

BERKE, BERKE & BERKE

Ronald J. Berke, Esq.
420 Frazier Avenue
Chattanooga, TN 37402
Telephone: (423) 266-5171
Facsimile: (423) 265-5307

TRAVIS & CALHOUN, P.C.

Eric G. Calhoun, Esq.
1000 Providence Towers East
5001 Spring Valley Road
Dallas, Texas 75244
Telephone: (972) 934-4100
Facsimile: (972) 934-4101

*Counsel for Plaintiffs and the Proposed
Settlement Class*

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF.

/s/ Edward W. Ciolko
Edward W. Ciolko