

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT INDEPENDENCE**

JOSEPH R. BERTELS, JR. AND SHARON  
M. BERTELS, et al.,

Plaintiffs,

vs.

U.S. BANK NATIONAL ASSOCIATION,  
et al.

Defendants.

Case No. 1616-CV28515

Division 17

**ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Now on this 7th day of December 2016, the Court takes up *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement*; and the Court, having considered the motion and suggestions in support, and the "Settlement Agreement and Release" dated November 30, 2016 attached thereto (the "Agreement"), and noting that the Agreement memorializes the negotiated and agreed-upon settlement of a number of claims arising from a defined set of specifically identified "Missouri Second Mortgage Loans" pending herein and in the "Missouri Cases" (viz., *Beaver v. U.S. Bank Trust National Association*, Case No. 00-CV-215097-01, filed June 23, 2000 (Cir. Ct. Jackson County) (consolidated with *Beaver v. U.S. Bank Trust National Association*, Case No. 03-CV-213643, filed May 28, 2003 (Cir. Ct. Jackson County)) and *Baker v. Century Financial Group, Inc.*, Case No. 7CV100004294, filed June 28, 2000 (Cir. Ct. Clay County), finds that *Plaintiffs' Motion for Preliminary Approval of Class Action Settlement* should be granted.

IT IS ORDERED that:

**A. Preliminary Class Certification**

1. The Agreement, and the settlement memorialized therein (the “Settlement”), are approved preliminarily as fair, reasonable and adequate to the “Trust Loans Settlement Class” as defined in the Agreement, subject to further consideration at the Fairness Hearing described in Paragraph 18 below.

2. The Agreement and the definitions in the Agreement are incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

3. The Named Plaintiffs and the Settling Defendants have executed the Agreement in order to settle and resolve the above-captioned lawsuit (the “Litigation”) as between the Named Plaintiffs and the proposed Trust Loans Settlement Class, on the one hand, and the Settling Defendants, on the other hand, as to the FCMC/CFG Related Trust Loans, subject to approval by the Court and satisfaction of the other Approval Conditions.

4. For the purpose of a settlement in accordance with the Agreement, and upon review of the *Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement*, the Court hereby preliminarily certifies the following class of persons as a settlement class (i.e., the “Trust Loans Settlement Class”):

All persons who obtained a “Second Mortgage Loan” as defined in § 408.231.1 RSMo from:

- (a) **First Consumers Mortgage, Inc.** (also known as First Consumers Financial, First Consumers Mortgage, and First Consumers Mortgage Corp.) on or after June 23, 1994, that was securitized via any of the following trusts: Bayview Financial Acquisition Trust 1998-B, Keystone Owner Trust 1998-P1, Keystone Grantor Trust 1998-P2, Keystone Owner Trust 1998-P2, Master Financial Asset Securitization Trust 1997-1, Master Financial Asset Securitization Trust 1998-1, Master Financial Asset Securitization Trust 1998-2, Mego Mortgage Home Loan Owner Trust 1997-1, Mego Mortgage Home Loan Owner Trust 1997-2, Mego Mortgage Home Loan Owner Trust 1997-4, and who did not timely exclude themselves from the litigation class certified in the class action lawsuit *Beaver v. U.S. Bank Trust National*

*Association*, Case No. 00-CV-215097-01, filed June 23, 2000 (Cir. Ct. Jackson County, Missouri) (consolidated with *Beaver v. U.S. Bank Trust National Association*, Case No. 03-CV-213643, filed on May 28, 2003 (Cir. Ct. Jackson County, Missouri)); or

- (b) **Century Financial Group, Inc.** on or after June 28, 1994 that was securitized via Keystone Grantor Trust 1998-P2, Keystone Owner Trust 1998-P2, TMI Home Loan Trust 1998-A, or United National Home Loan Owner Trust 1999-2, and who did not timely exclude themselves from the litigation class certified in the class action lawsuit *Baker v. Century Financial Group, Inc.*, Case No. 7CV100004294, filed on June 28, 2000 (Cir. Ct. Clay County, Missouri).

For purposes of this definition, if a member of the Trust Loans Settlement Class has died or otherwise voluntarily or involuntarily transferred his or her rights under a FCMC/CFG Related Trust Loan, such member's heir, representative, successor or assign shall also be deemed to be a member of the Trust Loans Settlement Class. If a member of the Trust Loans Settlement Class filed for Chapter 7 bankruptcy after obtaining his or her FCMC/CFG Related Trust Loan or is currently in an open Chapter 13 bankruptcy, then the bankruptcy trustee shall also be deemed to be a Trust Loans Settlement Class Member as to the debtor Class Member's particular loan.

5. Pursuant to the Agreement, and for purposes of the Settlement only, the Court finds preliminarily as to the Trust Loans Settlement Class that:

- a. The Trust Loans Settlement Class is so numerous that joinder of all members is impracticable;

- b. There are questions of law or fact common to the Trust Loans Settlement Class including, without limitation, questions related to the application of the MSMLA to the FCMC/CFG Related Trust Loans, the origination, sale, assignment, securitization, ownership and collection of the FCMC/CFG Related Trust Loans, and the measure of damages;

c. The claims of the Named Plaintiffs arise from the same conduct and course of conduct and are typical of those of the members of the Trust Loans Settlement Class;

d. There are no apparent conflicts of interest between the Named Plaintiffs and the Trust Loans Settlement Class or among the members of the Trust Loans Settlement Class, and the Named Plaintiffs and Plaintiffs' Counsel will fairly and adequately represent and protect the interests of the individual members of the Trust Loans Settlement Class; and

e. The questions of law or fact that are common to the members of the Trust Loans Settlement Class predominate over the questions affecting only individual members; and

f. Certification of the Trust Loans Settlement Class as proposed is an appropriate method for the fair and efficient adjudication of the controversies between the members of the Trust Loans Settlement Class and the Settling Defendants with respect to the FCMC/CFG Related Trust Loans and Released Claims without prejudice to the rights and claims of the Named Plaintiffs and members of the Trust Loans Settlement Class in the Missouri Cases against any persons, associations and entities other than the Settling Defendants and other "Released Persons" as to the "Released Claims." Certification of the Trust Loans Settlement Class and the class-wide resolution of the Litigation via the Settlement will promote judicial economy and uniformity of result without undue dilution of procedural safeguards for the members of the Trust Loans Settlement Class or the Settling Defendants.

6. For the purpose of this preliminary approval, and for all matters relating to the

Settlement and the Litigation, until further order of the Court, the Court appoints the Named Plaintiffs as Representatives of the Trust Loans Settlement Class and R. Frederick Walters, Kip D. Richards, David M. Skeens, and J. Michael Vaughan of the law firm Walters Bender Strohbehn & Vaughan, P.C., as Counsel for the Trust Loans Settlement Class (“Plaintiffs’ Counsel” or “Class Counsel”).

7. By this Order, the Court hereby exercises subject matter and personal jurisdiction over the Trust Loans Settlement Class for purposes of evaluating the fairness and adequacy of the Settlement and the final certification of the Trust Loans Settlement Class pursuant to the Settlement.

**B. Class Notice and Notice Plan**

8. The Class Mail Notice, as set forth in Exhibit A to the Agreement, is hereby approved.

9. Class Counsel shall mail the Class Mail Notice in a form substantially the same as that set forth in Exhibit A to the Agreement by first-class mail, postage prepaid, to (i) the Trust Loans Settlement Class (as identified on Exhibit D of the Agreement) and (ii) any known Chapter 7 bankruptcy trustees of any member of the Trust Loans Settlement Class for any Chapter 7 bankruptcy filed after origination of the class member’s loan and (iii) any known Chapter 13 bankruptcy trustees of any member of the Trust Loans Settlement Class for any currently open Chapter 13 bankruptcy. Such mailing shall be made within five (5) days of the entry of this Preliminary Approval Order.

10. The Class Mail Notice contains sufficient information which a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the Trust Loans Settlement Class and be bound by a final judgment, fairly

apprises the members of the Trust Loans Settlement Class of the terms and conditions of the Settlement, the estimated amount of or range of the Trust Loans Settlement Class Member Payments, the options that are open to the members of the Trust Loans Settlement Class in connection with the proceedings and apprises the members of the Trust Loans Settlement Class as to how they may obtain additional information from Class Counsel. In addition, the manner in which the Class Mail Notice will be disseminated ensures that notice of the Litigation and Settlement will reach most if not all of the members of the Trust Loans Settlement Class and is reasonable. The Agreement contemplates a method of notice that (a) protects the interests of the Named Plaintiffs, the Trust Loans Settlement Class, and the Settling Defendants, and each of them, (b) is the best notice practicable under the circumstances, and (c) is reasonably calculated to apprise the Trust Loans Settlement Class of the pendency of the Litigation and the Settlement and Agreement and the right to opt out and exclude themselves from or object to the proposed Settlement. In addition, the Court finds that the proposed method of notice is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement and meets all applicable requirements of law, including, but not limited to Mo. Rule 52.08 and the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

11. Prior to the Fairness Hearing, Class Counsel shall serve and file a sworn statement of a person with knowledge, evidencing compliance with the provisions of this Order concerning the mailing of the Class Mail Notice. Additionally, counsel for the Settling Defendants shall serve and file a sworn statement of a person with knowledge, evidencing compliance with Section 12 of the Agreement concerning the Trust Investors Notice and the entry of the Trustee Approval Order.

**C. Qualified Settlement Fund Approval and Administration**

12. The Settlement Fund is hereby approved as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and all rules and regulations thereunder, and any other applicable law. This account shall be known as the U.S. Bank/Wilmington Trust 2016 Section 468B Qualified Settlement Fund, and shall be referred to under that name in its official actions and dealings. Class Counsel shall serve as the Qualified Settlement Fund Administrator (the “Fund Administrator”).

13. The Fund Administrator is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, and to otherwise perform all obligations of the Fund Administrator without further order of the Court in a manner consistent with the provisions of the Settlement Agreement.

14. All taxes, costs and expenses associated with the Settlement Fund and its administration shall be paid as provided in the Agreement.

**D. Class Member Rights (Exclusion/Opt Out)**

15. Any member of the Trust Loans Settlement Class desiring exclusion from the Settlement and the Trust Loans Settlement Class shall mail a request for exclusion (“Opt Out Request”) to Class Counsel and Counsel for the Settling Defendants. To be valid, the Opt Out Request must be **received** by Counsel on or before **February 6, 2017**. Such Opt Out Request must be in writing and include: (a) the name, address, telephone number and the last four digits of the social security number of each individual seeking to opt out; (b) a statement that the individual is a member of the Trust Loans Settlement Class and that the individual and all co-borrowers named on the individual’s promissory note are seeking to opt out of the Settlement; (c) the signature of each person who was a party to the promissory note made in connection with

the class member's loan, unless such person is deceased or legally incompetent, in which event the Opt Out Request shall be signed by said deceased or legally incompetent person's personal representative or guardian; and (d) a reference to "*Bertels v. U.S. Bank, National Association*, Case No. 1616-CV28515." If the Opt Out Request is signed by the heir, representative, successor or assign, sufficient documentation showing his or her authority to sign must be provided with the Opt Out Request. Class Counsel and Counsel for the Settling Defendants shall promptly furnish each other with copies of any Opt Out Requests they receive.

16. Any member of the Trust Loans Settlement Class who does not timely and properly request to be excluded from the Trust Loans Settlement Class in full compliance with these requirements shall be included in the Trust Loans Settlement Class and shall be bound by any judgment entered in this action with respect to said Class.

17. Within a reasonable period after the deadline for submitting Opt Out Requests, but before the Fairness Hearing, Class Counsel shall file with the Court a sworn statement identifying those persons, if any, who submitted timely Opt Out Requests. The originals of all Opt Out Requests shall be provided to and retained by Class Counsel.

**E. Fairness/Final Approval Hearing Class Member Rights (Objection, Appearance, and Intervention)**

18. A hearing (the "Fairness Hearing") shall be held before the undersigned at **9:00 a.m. on March 6, 2017**, in Division 17 at the Jackson County Courthouse, 308 W. Kansas, Independence, Missouri 64050. At the Fairness Hearing, the Court will consider: (a) the fairness, reasonableness, and adequacy of the Settlement; (b) the entry of any final order or judgment in the Litigation with respect to the Trust Loans Settlement Class; (c) the application for incentive awards to be made to the Named Plaintiffs; (d) the application for attorneys' fees by Class Counsel and Class Counsel's request for reimbursement of expenses; and (e) other related



matters. The Fairness Hearing may be postponed, adjourned or continued by Order of the Court without further notice to the Trust Loans Settlement Class.

19. To be considered at the Fairness Hearing, any person who does not timely exclude him or herself from the Trust Loans Settlement Class and who desires to file an objection to or otherwise comment on the Settlement shall be required to file any such objections or comments and all supporting pleadings with the Court on or before **February 6, 2017**, with service upon Class Counsel and Counsel for the Settling Defendants in accordance with the Missouri Rules of Civil Procedure. The objection of any Trust Loans Settlement Class Member must be in writing and must set forth, contain or provide (a) his/her full name, current address, and telephone number; (b) a statement of each objection asserted; (c) a detailed description of the facts underlying each objection; (d) any loan documents in the objector's possession or control and relied upon as a basis for the objection; (e) if the objector is represented by counsel, a detailed description of the legal authorities supporting each objection; (f) if the objector plans to utilize expert opinion and/or testimony as part of the objection(s), a written expert report from all proposed experts; (g) if the objector plans to call a witness or present other evidence at the hearing, the objector must state the identity of the witness and identify any documents by attaching them to the objection and provide any other evidence that the objector intends to present; (h) a statement of whether the objector intends to appear at the hearing; (i) a copy of any exhibits which the objector may offer during the hearing; and (j) reference to "*Bertels v. U.S. Bank, National Association*, Case No. 1616-CV28515."

20. No objection to or other comment concerning the Settlement shall be heard unless timely filed and served in accordance with this Order and the Agreement. Class Counsel and Counsel for the Settling Defendants shall promptly furnish each other with copies of any written

objection to the Settlement that come into their possession.

21. Any attorney hired by a Trust Loans Settlement Class Member at the Class Member's expense for the purpose of appearing and/or making an objection shall file his or her Entry of Appearance on or before **February 6, 2017**. The Entry of Appearance shall be filed with the Clerk of the Court, with a copy served upon Class Counsel and Counsel for the Settling Defendants in accordance with the Rules of Civil Procedure.

22. Any Trust Loans Settlement Class Member who does not make his or her objection in the manner provided in this Order shall be deemed to have waived any such objection and shall be forever barred from making any objection to the Settlement, including but not limited to, the propriety of class certification, the adequacy of any notice, or the fairness, adequacy or reasonableness of the Settlement.

23. Any Trust Loans Settlement Class Member may appear at the Fairness Hearing in person, or by counsel if an appearance is filed and served as provided in the Class Mail Notice, and such person will be heard to the extent allowed by the Court. No person shall be permitted to be heard unless on or before **February 6, 2017** such person has (a) filed with the Clerk of the Court a notice of such person's intention to appear; and (b) served copies of such notice upon Class Counsel and Counsel for the Settling Defendants in accordance with the Rules of Civil Procedure.

24. Any Trust Loans Settlement Class Member may seek to intervene in the Litigation in person, or by counsel if a motion to intervene is filed and served as provided in the Class Mail Notice. No person shall be permitted to intervene unless, on or before **February 6, 2017**, such person has (a) filed with the Clerk of the Court a valid motion to intervene and (b) served copies of such notice upon Class Counsel and Counsel for the Settling Defendants in

accordance with the Rules of Civil Procedure.

**E. Miscellaneous Matters**

25. Submissions of the Parties relative to the Settlement, including memoranda in support of the Settlement, applications for attorneys' fees and reimbursement of expenses by Class Counsel consistent with the Agreement, and any applications for the payment of services rendered by the Named Plaintiffs consistent with the Agreement, shall be filed with the Clerk of the Court on or before **February 24, 2017** with a service copy to Counsel for the Settling Defendants.

26. All other events contemplated by the Agreement to occur after entry of this Order and before the Fairness Hearing shall be governed by the Agreement and the Class Mail Notice, to the extent not inconsistent with this Order. Class Counsel and Counsel for the Settling Defendants shall take such further actions as are required by the Agreement.

27. The Parties shall be authorized to make non-material changes to the Class Mail Notice provided Class Counsel and Counsel for the Settling Defendants agree in advance of the mailing. Neither the insertion of dates nor the correction of typographical or grammatical errors shall be deemed a material change to the Class Mail Notice.

28. The Litigation is hereby stayed until further order of this Court, other than as may be necessary to carry out the terms of the Agreement and effectuate the Settlement and the responsibilities related or incidental thereto.

29. Although final as to the "Released Claims" against the Settling Defendants and other "Released Persons," the Settlement does not constitute a full and final settlement of all the claims arising from the Missouri Second Mortgage Loans made to the Named Plaintiffs and the members of the Trust Loans Settlement Class. As provided in the Agreement, neither the

Litigation nor the dismissal of claims asserted in the Litigation shall in any way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or other adjudication of any claims of the Named Plaintiffs or Trust Loans Settlement Class Members against any person, association or entity except for the “Released Claims” as defined in Section 2.33 of the Agreement against the “Released Persons” as defined in Section 2.32 of the Agreement. Nor does the Settlement settle, resolve, release or in any way stay, bar, preclude or abate the claims arising from any of the Missouri Second Mortgage Loans made to the Non-Trust Loan Plaintiff Borrowers. The claims and causes of action of the Non-Trust Loan Plaintiff Borrowers, including but not limited to Named Plaintiffs James C. Baker and Jill S. Baker Weyrauch, Jeffrey A. Cox and Michelle A. Cox, William L. Springer and Linda A. Springer Babcock, against Wilmington Trust Company as an assignee, owner, holder, trustee, servicer and/or master servicer of any loans other than the FCMC/CFG Related Trust Loans, and all other assignees, owners, holders, trustees, servicers and/or master servicers of any loans other than the FCMC/CFG Related Trust Loans, are not “Released Claims,” have not been released, and are expressly preserved.

30. If Final Approval of the Settlement does not occur, or if the Settlement does not become effective on or before the Effective Date as provided in the Agreement, or if the Settlement is rescinded or terminated for any reason, the Settlement and all proceedings had in connection therewith shall be deemed null and void and without prejudice to the rights of the Parties before the Settlement was executed and made, and this Order and all other Orders issued pursuant to the Settlement shall be vacated, rescinded, canceled, annulled and deemed “void” and/or “no longer equitable” or set aside for a reason that otherwise “justifies relief” for purposes of Mo. Rule 74.06 or Fed.R.Civ.P. 60(b) as provided in and subject to Section 16 of the

Agreement.

31. Neither this Order, the Agreement, nor any of their terms or provisions, nor any of the negotiations between the Parties or their counsel (nor any action taken to carry out this Order), is, may be construed as, or may be used as an admission or concession by or against any of the Parties or the Released Persons of (i) the validity of any claim or liability, any alleged violation or failure to comply with any law, any alleged breach of contract, any legal or factual argument, contention or assertion, (ii) the truth or relevance of any fact alleged by Plaintiffs, (iii) the existence of any class alleged by Plaintiffs, (iv) the propriety of class certification if the Litigation or the Missouri Cases were to be litigated rather than settled, (v) the validity of any claim or any defense that has been or could have been asserted in this action or any other litigation; (vi) that the consideration to be given to the Trust Loans Settlement Class Members pursuant to the Settlement represents the amount which could be or would have been recovered by any such persons after trial; or (vii) the propriety of class certification in this action or any other lawsuit or proceeding. Entering into or carrying out the Agreement, and any negotiations or proceedings related to it, shall not in any way be construed as, or deemed evidence of, an admission or concession as to the denials, defenses, or factual or legal positions of the Settling Defendants and shall not be offered or received in evidence in any action or proceeding against any party in any court, administrative agency or other tribunal for any purpose whatsoever, except as is necessary in a proceeding (a) to enforce the terms of this Order, and the Settlement or the Agreement or (b) to show, if appropriate, the recoveries obtained by the Named Plaintiffs and other Trust Loans Settlement Class Members hereunder, including, without limitation, the damages, attorneys' fees award and costs; provided, however, that this Order and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be

filed by the Settling Defendants in any action filed against or by the Settling Defendants or other “Released Persons” to support a defense of *res judicata*, collateral estoppel, release, waiver, good faith settlement, judgment bar or reduction, full faith and credit, or any other theory of issue or claim preclusion, or similar defense or counterclaim, and provided, further that this Order and the Agreement (including the Exhibits and Schedules, subject to appropriate confidentiality protections) may be filed by the Settling Defendants in any action filed against or by the Settling Defendants or any other Released Person to support a claim for insurance coverage or other claim of indemnification, contribution, or reimbursement relating to the Agreement. The Settling Defendants expressly reserve all rights and defenses to any claims and do not waive any such rights or defenses in the event that the Agreement is not approved for any reason.

SO ORDERED.

Date: 12/7/2016

  
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JACK GRATE, Circuit Judge

**Certificate of Service**

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to the attorneys of record on 12/7/2016.

  
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Judicial Administrative Assistant/Law Clerk