

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: COMMUNITY BANK OF NORTHERN VIRGINIA SECOND MORTGAGE LENDING PRACTICES LITIGATION	MDL No. 1674  Case No. 03-0425 Case No. 05-0688  Hon. Arthur J. Schwab  THIS DOCUMENT RELATES TO ALL MDL ACTIONS
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**FINAL ORDER PURSUANT TO FED. R. CIV. P. 23 GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

The Court having carefully reviewed and considered the Final and Binding Settlement Jointly Agreed to Term Sheet dated August 8, 2016 (the "Agreement"), attached as Exhibit 1 to the Unopposed Motion for Preliminary Approval of Class Action Settlement (Docket No. 759) between Plaintiffs Brian W. and Carla M. Kessler, Flora A. Gaskin, Philip F. and Jeannie C. Kossler, John and Kathy Nixon, John and Rebecca Picard, William and Ellen Sabo and Tammy and David Wasem, individually and on behalf of the certified General Class and Sub-Classes (collectively, "Plaintiffs") and Defendant PNC Bank, N.A., the evidence and arguments of counsel as presented at the Fairness Hearing held on December 13, 2016, the Unopposed Motion for Preliminary Approval of Class Action Settlement filed by the Parties seeking approval of the Agreement (Docket No. 759) and all other filings in connection with the Parties' settlement and for good cause shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. **Incorporation of Other Documents.** This Order incorporates and makes the Agreement a part hereof.

2. **Jurisdiction.** Because adequate notice was disseminated and all members of the General Class and Sub-Classes were given notice of and an opportunity to opt out of the Settlement, the Court has personal jurisdiction over all members of the General Class and Sub-Classes. The Court has subject matter jurisdiction over the underlying actions and multidistrict proceeding, including, without limitation, jurisdiction to approve the proposed Settlement pursuant to 28 U.S.C. § 1334 and venue is proper before this Court pursuant to 28 U.S.C. §§ 1391 and 1407.

3. **Final Class Certification.** By Order dated July 31, 2013, and as amended on October 27, 2015, the Court certified (defined) the following General Class and Sub-Classes of persons in this case, which decision was affirmed by the United States Court of Appeals for the Third Circuit in July 2015:

THE GENERAL CLASS (“CBNV General Class”)

All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling, for the period May 1998-December 2002.

THE SUB-CLASSES

Sub-Class 1: (RESPA ABA Disclosure Sub-Class) – All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling for the period May 1998-October 1998.

Sub-Class 2: (RESPA Kickback Sub-Class) – All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling for the period October 1998-November 1999.

Sub-Class 3: (TILA/HOEPA Non-Equitable Tolling Sub-Class) – All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling for the period May 1, 2000-December 2002.

Sub-Class 4: (TILA/HOEPA Equitable Tolling Sub-Class) – All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling for the period May 1998-April 30, 2000.

Sub-Class 5: (RICO Sub-Class) – All persons nationwide who obtained a second or subordinate, residential, federally related, non purchase money, mortgage loan from CBNV that was secured by residential real property used by the Class Members as their principal dwelling for the period May 1998-December 2002.

The General Class and Sub-Classes, each of which this Court previously certified, fully satisfy all of the applicable requirements of Rule 23 and due process.

Pursuant to Federal Rule 23(e)(4) the Court has afforded a new opportunity to request exclusion to each of the individual members of the General Class and Sub-Classes who had an earlier opportunity to request exclusion but did not do so. A list of those persons who have timely excluded themselves from the General Class and Sub-Classes, either in response to the Settlement Notice or earlier Class Certification Notice, and who therefore are not bound by the Settlement and the Final Judgment, is attached hereto as **Exhibit 1** and incorporated herein and made a part hereof.

4. **Adequacy of Representation.** There are no apparent conflicts of interest between (1) the Named Plaintiffs and the members of the General Class and/or Sub-Classes, or (2) the members of the General Class and the Sub-Classes; or (3) the members of the different Sub-Class as a result of the Settlement or the arbitration procedures agreed to by the parties. Class Counsel will fairly and adequately represent and protect the interests of all members of the General Class and Sub-Classes. Accordingly, (a): the Named Plaintiffs and R. Frederick Walters, David M. Skeens, J. Michael Vaughan, and Garrett M. Hodes of the firm Walters Bender Strohbehn & Vaughan, P.C., and R. Bruce Carlson, Gary Lynch and Jamisen A. Etzel of the law firm Carlson

Lynch Sweet Kilpela & Carpenter, LLP as Counsel for the General Class and Sub-Classes (“Plaintiffs’ Counsel” or “Class Counsel”), have satisfied the requirements of Rule 23 and are hereby appointed and approved as representatives of and counsel for the General Class and Sub Classes, respectively.

5. **Class Notice.** The Court finds that the Class Mail Notice and its distribution to the members of the General Class and Sub-Classes as implemented pursuant to the Agreement and the Preliminary Approval Order:

a. Constituted the best practicable notice to the members of the General Class and Sub-Classes under the circumstances of this Litigation;

b. Constituted notice that was reasonably calculated, under the circumstances, to apprise the members of the General Class and Sub-Classes of (i) the proposed Settlement, (ii) the nature of the action, (iii) the definition of the General Class and Sub-Classes, (iv) the class claims, issues or defenses, (v) that a member of the General Class and Sub-Classes may enter an appearance through an attorney if the member of the General Class and Sub-Classes so desires, (vi) their right to opt out and exclude themselves from the proposed Settlement and the time and manner for doing so, (vii) their right to object to any aspect of the proposed Settlement and the time and manner for doing so (including, but not limited to, the following: the fairness, reasonableness or adequacy of the Settlement as proposed; the adequacy of the Named Plaintiffs and/or Class Counsels’ representation of the General Class and Sub-Classes; the proposed awards of attorney’s fees and expenses; and the proposed incentive awards), (viii) their right to appear at the Fairness Hearing if they did not exclude themselves from the General Class and Sub-Classes and (ix) the

binding effect of the Order and Final Judgment approving the Settlement on all members of the General Class and Sub-Classes who did not request exclusion;

c. Constituted notice that was reasonable and constituted due, adequate and sufficient notice to all persons and entities entitled to be provided with notice; and

d. Constituted notice that fully satisfied the requirements of Federal Rule 23, due process, and any other applicable law.

6. **Final Settlement Approval.** The terms and provisions of the Agreement, including all exhibits, have been entered into in good faith and as a result of serious, informed, arm's length and non-collusive negotiations. Based on the range of possible outcomes and the cost, delay and uncertainty associated with further litigation, the Agreement and the arbitration procedures that will result in award by the Arbitration Panel to the General Class and Sub-Classes is fair, adequate and reasonable. Therefore, the terms of the Agreement and the Settlement as provided therein are fully and finally approved pursuant to Federal Rule 23, as fair, reasonable and adequate as to, and in the best interests of, the Parties and the members of the General Class and Sub-Classes, and in full compliance with all applicable requirements of the United States Constitution (including the Due Process Clause), and any other applicable law. The Parties are hereby directed to implement and consummate the Agreement and arbitration procedures according to its terms and provisions.

7. **Binding Effect.** The terms of the Agreement and this Order, and the Arbitration Panel's award, shall be forever binding on all of the members of the General Class and Sub-Classes and the Named Plaintiffs, individually and as representatives of the General Class and Sub-Classes, as well as on their respective heirs, executors, administrators, assigns, predecessors, and successors, and any other person claiming by or through any or all of them.



8. **Releases.** All members of the General Class and Sub-Classes shall be bound by the Agreement and the Arbitration Panel's award and, upon the entry of the Arbitration Panel's award, will be deemed to have released all claims against Defendant PNC Bank, N.A., that were brought or could have been brought against PNC Bank, N.A. in this litigation resulting from the origination of their second mortgage loans by Community Bank of Northern Virginia.

9. **Objections.** The Court finds that there were no objections or other opposition filed with the Court to the Settlement or to Plaintiffs' request for awards of attorneys' fees, expenses and/or incentive payments to the Named Representatives.

10. **Enforcement of Settlement.** Nothing in this Order shall preclude any action by any Party to enforce the terms of the Agreement.

11. **Additional Payment to the Named Plaintiffs.** The Court finds that an award to each of the Named Representatives of an amount ~~not to unreasonably exceed \$3,750.00, with the specific amount to be awarded by the Arbitration Panel~~ <sup>(not to exceed 13 persons) → IN THE AMOUNT OF</sup> is fair, adequate and reasonable. <sup>PER PERSON (FOR A TOTAL, NOT TO EXCEED</sup>

~~12. **Attorney's Fees and Expenses.** In addition, the Court finds that an award to Plaintiffs' Counsel of their known litigation expenses, not to unreasonably exceed \$465,416.81, with the specific amount to be awarded by the Arbitration Panel, is fair, adequate and reasonable. The specific amount of known litigation expenses awarded by the Arbitration Panel shall be deducted from the final settlement amount awarded by the Arbitration Panel.~~ <sup>\$48,750)</sup>

13. In addition, the Court finds that an award to Plaintiffs' Counsel of their unknown future expenses (which will include expenses in the following categories: (a) one half the fees and costs for the three-person Panel (the other half will be paid by PNC); (b) one half of the Special Master's and the Mediator's fees; (c) additional litigation expenses and costs reasonably incurred by Class Counsel to prepare for and conduct the arbitration and the final approval hearing; (d)

~~settlement administration expenses; and (e) costs of providing Notice to the Class) is fair, adequate and reasonable. The above-referenced categories of unknown future expenses awarded by the Arbitration Panel shall be deducted from the final settlement amount awarded by the Arbitration Panel.~~

14. In addition, the Court finds that an award to Plaintiffs' Counsel of attorney's fees not to unreasonably exceed 35% of the final settlement amount, with the specific amount to be awarded by the Arbitration Panel, is fair, adequate and reasonable. The Court finds and concludes that each of the above awards to Plaintiffs' Counsel for work and services in this case and in connection with the Settlement is reasonable for the reasons stated in Plaintiffs' Motion for Awards of Attorneys' Fees, Expenses, and Incentive Payments to Named Representatives ("Plaintiffs' Motion") and accompanying Memorandum, and finds as follows with respect to the factors commonly utilized by this Court and the Third Circuit, *see, e.g., In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009) and *In re AT & T Corp.*, 455 F.3d 160, 166 (3d Cir. 2006):

- a. The requested fee of 35% of the final settlement amount is reasonable and appropriate in relation to the size of the settlement, which by the Arbitration Panel's award, will be either \$24 million or \$70 million, with an average (unallocated payout) of approximately \$565 or \$1,685 per loan, respectively.
- b. No member of the General Class and Sub-Classes has objected to any aspect of the Settlement and 9 borrowers as to only 6 Class loans timely opted out or excluded themselves from the Settlement. The reaction of the Class to the Settlement has been overwhelmingly favorable.
- c. The competence, experience and perseverance of Class Counsel demonstrates a very high quality of representation. ~~In addition, and illustrative of the quality of~~

~~Class Counsel's representation, Class Counsel was opposed by counsel of national reputation in the defense of matters of this sort.~~

- d. The legal issues raised in prosecuting the claims of the General Class and Sub-Classes were (and remain) complex and difficult, as illustrated by the claims asserted, defenses raised and the long and intricate procedural history. The magnitude and the complexities of the litigation involving 26,698 loans justify the fee requested.
- e. The results obtained for the General Class and Sub-Classes are exceptional in light of the risks posed by the litigation. Such risks include, but are not limited to, the general risk of contingency fee litigation. Class Counsel would have received no fee had they not been successful. In addition, Class Counsel risked large amounts of expenses and advances for in excess of 15 years on the successful outcome of this matter. The risks also include establishing liability, the risk in establishing damages, the risk of establishing and maintaining class certification, and trial and appeal risk. The results achieved are of paramount importance when considering the fee request and certainly justify the fee request. Moreover, the Court is mindful that risk assessment must be measured at the outset of litigation.
- f. The time and labor required to litigate this matter and obtain the Settlement was extensive, and includes 62,654.35 hours since the inception of the litigation. The range of hourly rates in the Declarations filed by Class Counsel in support of Plaintiffs' Motion are reasonable. Using those reasonable rates in calculating the lodestar represents a negative lodestar multiplier of approximately .77 if the Panel chooses Plaintiffs' \$70 million settlement value or .26 if the Panel chooses PNC's



~~\$24 million settlement value. Either multiplier is reasonable as a cross-check to the percentage of the fund requested by Class Counsel.~~

- ~~g. Class Counsel's request of a fee award of 35% of the final settlement amount is within the range of awards frequently seen in consumer-oriented class settlements, including those specifically dealing with second mortgage loans.~~
- ~~h. Public policy favors the fee request. Payment of the requested fee will and should encourage lawyers and law firms to continue to advance funding for similar contingent litigation in the future.~~
- ~~i. The requested 35% fee is customary and within the range of percentages that would have been agreed to in a private contingent fee arrangement entered into at the time counsel was retained to initiate the litigation.~~
- ~~j. The arbitration procedure which will be utilized to achieve the parties' final settlement amount is innovative and represents a fair, cost-effective and good faith effort to finally resolve this litigation and the claims of the members of the General Class and Sub-Classes, as well as the allocation of the Arbitration Panel's award among the Sub-Classes without further delays or appeals.~~
- ~~k. The known and unknown litigation costs and expenses are also reasonable and equitable in amount and by category (for the unknown expenses) for a matter of this complexity and duration.~~

~~12. No Other Payments. The preceding paragraphs of this Final Order cover, without limitation, any and all claims against PNC Bank, N.A. for attorney's fees and expenses, costs or disbursements incurred by Plaintiffs' Counsel or any other counsel representing the Named Plaintiffs as representatives of the General Class and Sub-Classes, or incurred by the General Class~~

and ~~Sub Classes, in connection with their claims against PNC Bank, N.A., except to the extent otherwise specified in this Order or the Agreement.~~

**12 X. Retention of Jurisdiction.** Without in any way affecting the finality of this Order, this Court expressly retains jurisdiction as to all matters relating to the administration and enforcement of the Agreement and Settlement and of this Order, and for any other necessary purpose as permitted by law, including, without limitation:

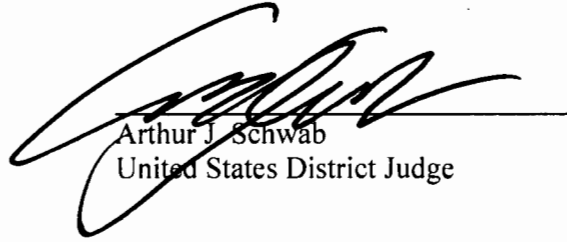
a. enforcing the terms and conditions of the Agreement and Settlement and resolving any disputes, claims or causes of action that, in whole or in part, are related to the administration and/or enforcement of the Agreement, Settlement, this Order (including, without limitation, whether a person is or is not a member of the General Class and Sub-Classes; and whether any claim or cause of action is or is not barred by this Order);

b. entering such additional Orders as may be necessary or appropriate to protect or effectuate the Court's Order and/or to ensure the fair and orderly administration of the Settlement and distribution of the Arbitration Panel's awards; and

c. entering any other necessary or appropriate Orders to protect and effectuate this Court's retention of continuing jurisdiction.

**13 X. Claims Reserved.** The entry of this Order shall in no way stay, bar, preclude, abate or otherwise operate as a dismissal, release, discharge or adjudication of any claims of the members of the General Class and Sub-Classes against PNC Bank, N.A., except those arising out of the origination of the second mortgage loans by Community Bank of Northern Virginia.

Dated: 12/13, 2016  
Pittsburgh, Pennsylvania



Arthur J. Schwab  
United States District Judge

**EXHIBIT 1**

**Exclusion Requests**

**Excluded Pursuant to Settlement Notice**

1. **Benton, Gary S.**
2. **Dennard, Doris J.**
3. **Feeny, Patrick J.**
4. **Feeny, Stacy A.**
5. **Hampton, Elizabeth**
6. **Hulyk, Jane A.**
7. **Look, Charles E.**
8. **Pierce, H. Lamar**
9. **Robinson, Beverly Ann**

**Excluded Pursuant to Certification Notice**

1. **Komosinski, Joseph**
2. **Simerka, Kevin**