

**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

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND SETTLEMENT HEARING**

*A Missouri Court has authorized this Notice. This is not a solicitation from a lawyer.  
Please read this Notice carefully and completely.*

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE AMONG A CLASS OF PERSONS WHO OBTAINED A “SECOND MORTGAGE LOAN” AS DEFINED UNDER MISSOURI LAW THAT WAS: (A) SECURED BY A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL REAL PROPERTY LOCATED IN MISSOURI FROM FIRST CONSUMERS MORTGAGE, INC. (ALSO KNOWN AS FIRST CONSUMERS FINANCIAL, FIRST CONSUMERS MORTGAGE, AND FIRST CONSUMERS MORTGAGE CORP.) OR CENTURY FINANCIAL GROUP, INC.; AND (B) “SECURITIZED” IN ONE OR MORE OF THE HOME LOAN TRUSTS IDENTIFIED IN THE SETTLEMENT AND RELEASE AGREEMENT. THE SUBJECT LOANS ARE REFERRED TO AS THE “FCMC/CFG RELATED TRUST LOANS.”

AS A MEMBER OF THE DEFINED “TRUST LOANS SETTLEMENT CLASS,” YOU ARE ELIGIBLE TO RECEIVE A PAYMENT OF MONEY WITH REGARD TO YOUR FCMC/CFG RELATED TRUST LOAN PURSUANT TO THE SETTLEMENT DESCRIBED IN THIS NOTICE. IF APPROVED BY THE COURT, THE SETTLEMENT WILL RESOLVE ALL OF YOUR CLAIMS AGAINST THE SETTLING DEFENDANTS AND CERTAIN OTHER PERSONS WITH REGARD TO YOUR FCMC/CFG RELATED TRUST LOAN. THOSE MEMBERS OF THE TRUST LOANS SETTLEMENT CLASS WHO DO NOT OPT OUT OF AND EXCLUDE THEMSELVES FROM THE SETTLEMENT WILL RECEIVE A PAYMENT OF MONEY RANGING FROM AN ESTIMATED \$250.00 TO \$88,084.10 (\$27,496.22 ON AVERAGE) IN EXCHANGE FOR A DISMISSAL OF THEIR CLAIMS AGAINST THE SETTLING DEFENDANTS. YOU CAN SEE WHAT CLASS COUNSEL CURRENTLY ESTIMATES THE AMOUNT OF YOUR “TRUST LOANS SETTLEMENT CLASS MEMBER PAYMENT” TO BE BY VISITING [www.wbsvlaw.com](http://www.wbsvlaw.com) AND CLICKING

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

ON THE LINK “OUR CASES” THEN “CLASS ACTION SETTLEMENTS” THEN “2016 TRUST LOANS SETTLEMENT.”

## 1. WHY SHOULD I READ THIS NOTICE?

This Notice has been mailed to you because the Parties’ records show that: (1) you obtained a second mortgage loan that was secured by your Missouri residence and that was originated by either First Consumers Mortgage, Inc. (a/k/a First Consumers Financial, First Consumers Mortgage, and First Consumers Mortgage Corp.) (“FCMC”) on or after June 23, 1994, or by Century Financial Group, Inc. (“CFG”) on or after June 28, 1994; (2) you are a member of the “Litigation Class” certified in the lawsuit styled *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 May 28, 2003 (Cir. Ct. Jackson County, Missouri)) or the lawsuit styled *James and Jill Baker, et al., v. Century Financial Group, Inc. et al.*, Case No. 7CV100004294, filed June 28, 2000 (Cir. Ct. Clay County, Missouri) (the “Missouri Cases”); (3) you did not timely exclude yourself from the Litigation Class in the Missouri Cases; and (4) your loan from FCMC or CFG was securitized in one of the home loan trusts identified by U.S. Bank National Association and Wilmington Trust Company (the “Trusts”).

Your second mortgage loan is currently the subject of a separate class action lawsuit filed in the Circuit Court of Jackson County, Missouri styled “*Bertels v. U.S. Bank National Association*, Case No. 1616-CV28515” (the “Lawsuit” or “Litigation”). The Lawsuit was filed for purposes of effecting a class action settlement and resolving the claims of certain class members in the Missouri Cases. Your second mortgage loan is among the loans at issue in one of the Missouri Cases.

You (and any co-borrower(s) on your second mortgage loan) are now eligible to receive payment of money in connection with your second mortgage loan pursuant to a proposed settlement (the “Settlement”) entered into on November 30, 2016 by Joseph R. Bertels, Jr., Sharon M. Bertels, James C. Baker, Jill S. Baker Weyrauch, Jeffrey A. Cox, Michelle A. Cox, William L. Springer, and Linda A. Springer Babcock, the “Named Plaintiffs” in the Lawsuit, and the Settling Defendants.

The Named Plaintiffs and the Settling Defendants are collectively referred to in this Notice as the “Parties.”

This Notice generally describes your rights under the proposed Settlement, which has been preliminarily approved by the Circuit Court of Jackson County, Missouri (the “Court”) and provides notice to you of the date and time of the “Fairness Hearing” that the Court will conduct to consider whether Settlement should be finally approved. Please share this Notice with any co-borrower(s) on your loan(s).

## 2. WHAT IS THE SETTLEMENT ABOUT?

The Lawsuit was filed on December 1, 2016 in the Circuit Court of Jackson County, Missouri at Independence. The plaintiffs filed the lawsuit on their own behalf, and on behalf of a proposed class of other second mortgage borrowers who obtained second mortgage loans secured by Missouri residential real estate from either FCMC or CFG, which was securitized in one of the “Trusts” as defined above.

Plaintiffs filed the Lawsuit in order to consolidate and expeditiously resolve 39 individual but substantially similar claims against the Settling Defendants arising from the FCMC/CFG Related Trust Loans as asserted in the Missouri Cases.

The plaintiffs allege that FCMC and CFG, the originating lenders, violated the Missouri Second Mortgage Loans Act (“MSMLA”), §§ 408.231-408.241 RSMo, by directly or indirectly charging, contracting for and/or receiving a number of different fees in connection with its Missouri second mortgage loans in violation of the MSMLA, § 408.233.1 RSMo. The plaintiffs allege that the entities that purchased or received the Missouri loans, including the Trusts and their trustees, are derivatively liable to the borrowers for FCMC’s and/or CFG’s violations of Missouri law. In addition, the plaintiffs allege that the entities that purchased and/or serviced the loans, including the Trusts and their trustees, violated the MSMLA by directly or indirectly charging, contracting for and/or receiving the illegal settlement charges and loan fees, as well as interest, on the unlawful loans that FCMC and CFG made. The Settling Defendants deny the plaintiffs’ allegations of wrongdoing and liability, and maintain that, as trustees for entity-trusts that held the FCMC/CFG Related Trust Loans, they are not liable in any capacity for any alleged violations of the MSMLA.

On November 30, 2016, the Named Plaintiffs, as representatives of the members of the proposed Trust Loans Settlement Class, and the Settling Defendants agreed to settle and resolve the Lawsuit as between the Trust Loans Settlement Class and the Settling Defendants. The Settlement and its terms are summarized in this Notice. The loans covered by the Settlement are referred to as the “FCMC/CFG Related Trust Loans.” If approved by the Court, the Settlement will bring an end to the Released Claims that the Named Plaintiffs are pursuing in the Lawsuit on behalf of the Trust Loans Settlement Class with regard to FCMC/CFG Related Trust Loans. The settlement will also resolve and end the Released Claims as currently asserted in the Missouri Cases. Complete details of the Settlement are contained in a written “Settlement Agreement and Release” (the “Agreement”) filed with the Court.

On December 7, 2016, the Court preliminarily approved the Settlement as fair, reasonable, and adequate. The Court will conduct a “fairness hearing” **on March 6, 2017** to consider, among other things, whether the Settlement should be finally approved as fair, reasonable, and adequate. The proposed Settlement will become effective only if it is finally approved by the Court, provided all the other terms and conditions of the Settlement as stated in the Agreement are met.

### 3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?

The Settlement will only apply to the “Trust Loans Settlement Class Members” as defined in the Agreement. The “Trust Loans Settlement Class” is comprised of:

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).

### 4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

The following is only a summary of some of the terms and conditions of the proposed Settlement. For more information, you may obtain a copy of the executed Agreement by contacting Plaintiffs’ Counsel at the address listed in Section 7 of this Notice, or by visiting the website of Plaintiffs’ Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link “Our Cases” then “Class Action Settlements” then “2016 Trust Loans Settlement.”

- A. The total amount that the Settling Defendants have agreed to pay in settlement (the “Settlement Fund”) is \$2,000,000.00. If the Court approves the Settlement, the members of the Trust Loans Settlement Class who do not exclude themselves from the Settlement will receive a settlement payment ranging from an estimated \$250.00 to \$88,084.10 (\$27,496.22 on average) per loan. The amount of each such “Trust Loans Settlement Class

Member Payment” represents a pro rata share of the “Net Distributable Settlement Fund” recovered pursuant to the Settlement and has been determined on a per loan basis, based on a negotiated percentage of the sum of the following: (a) the total amount of the loan fees that were charged, contracted for or received in connection with the loans that are alleged to violate the MSMLA; (b) the actual and/or estimated amount of interest paid on the loan; and (c) prejudgment interest accruing on those amounts.

The “Net Distributable Settlement Fund” is a percentage of the “Net Settlement Fund.” The “Net Settlement Fund” is determined by deducting the following from the Settlement Fund: (a) the amount of any incentive fees that the Court awards to the Named Plaintiffs for their services, time and commitment in representing the Trust Loans Settlement Class; (b) the amount of any litigation expenses and court costs that the Court awards to Plaintiffs’ Counsel pursuant to the Agreement; and (c) any interest earned and attributable to these awards, respectively, while in the Settlement Fund Account. As proposed, the “Net Distributable Settlement Fund” will total \$1,072,352.65, or fifty-five percent (55%) of the “Net Settlement Fund.” The Named Plaintiffs and Plaintiffs’ Counsel will ask the Court to award the remaining forty-five percent (45%) of the “Net Settlement Fund” (\$877,379.44), as attorneys’ fees to Plaintiffs’ Counsel for their services and work in pursuing the claims against the Settling Defendants and in procuring the \$2,000,000.00 Settlement Fund for the Trust Loans Settlement Class. The bases for the proposed incentive, expense and attorneys’ fees awards that the Named Plaintiffs and Plaintiffs’ Counsel will ask the Court to approve are explained in Section 10 of this Notice.

The members of the Trust Loans Settlement Class can review what Plaintiffs’ Counsel currently estimates the amount of their particular Trust Loans Settlement Class Member Payment to be by visiting the website of Plaintiffs’ Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com), and clicking on the link “Our Cases” then “Class Action Settlements” then “2016 Trust Loans Settlement.”

- B. If the Court approves the Settlement and it becomes effective in accordance with the terms and conditions of the Agreement, the members of the Trust Loans Settlement Class who do not exclude themselves from the Settlement will receive their Trust Loans Settlement Class Member Payment for the loan by check. The check will be mailed by first-class mail, postage prepaid, to the Trust Loans Settlement Class Members, or to the bankruptcy trustee for those Trust Loans Settlement Class Members (1) who filed a Chapter 7 bankruptcy after obtaining their loan or (2) who filed a Chapter 13 bankruptcy after obtaining their loan and whose Chapter 13 bankruptcy is currently open. The check will be mailed by the Fund Administrator and will not come from the Settling Defendants directly.

**Joint borrowers, such as a husband and wife, will receive a single payment per loan, even if they are separated or divorced. Any Trust Loans Settlement Class Member who receives a payment under the Settlement is personally and solely responsible for distributing or allocating the payment between or among any co-borrower(s), regardless of whether the check is made payable to all or only some of the Trust Loans Settlement Class Member’s co-borrowers. Trust Loans Settlement Class Members will also be responsible for paying any taxes due on any Trust Loans**

**Settlement Class Member Payment received. Trust Loans Settlement Class Members are strongly encouraged to consult with their own tax advisor concerning the tax effects of any money received pursuant to this Settlement. Plaintiffs' Counsel cannot provide you with any tax advice.**

Note: A Trust Loans Settlement Class Member's right to a settlement payment is a conditional right that terminates if a Trust Loans Settlement Class Member to whom a Trust Loans Settlement Class Member Payment check is mailed fails to cash his or her check within one hundred eighty (180) days from the date of issuance of said check. In such case, the check shall be null and void (the checks shall be stamped or printed with a notice to such effect), and the Parties shall have no further obligation to make any payment to such Trust Loans Settlement Class Member.

- D. Each of the Settling Defendants, other than Wilmington Trust Company in its Representative Capacities, has agreed to deem all FCMC/CFG Related Trust Loans currently owned or held by it in any relevant capacity as fully repaid and satisfied or otherwise resolved such that no debt or other amount remain due and/or owing from the obligors. Such Settling Defendants will not seek to collect, recover on, or obtain any relief in connection with any such FCMC/CFG Related Trust Loan.
- E. The proposed Settlement will be enforceable regardless of its tax consequences. All Trust Loans Settlement Class Members will be responsible for paying and/or reporting any and all federal, state and local taxes that become due by virtue of the benefits conferred in this Settlement.
- F. The proposed Settlement will become effective only if approved by the Court and all of the other terms and conditions as to effectiveness as stated in the Agreement are met. If the Settlement is approved, the Court will enter a Final Approval Order and Judgment that releases and discharges the Settling Defendants and the Released Persons as of the "Effective Date" from the Released Claims. The Releases are further discussed and set out in Section 11 of this Notice.

## **5. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?**

**NOTHING.** You are already a member of the Trust Loans Settlement Class and will participate in the Settlement and will receive a Trust Loans Settlement Class Member Payment as stated above if the Court approves the proposed Settlement. **If you filed for bankruptcy protection after you obtained your loan from FCMC or CFG, you are still a member of the Trust Loans Settlement Class, but the Settlement Payment will be made payable to you and your Chapter 7 bankruptcy trustee or your Chapter 13 bankruptcy trustee (if the Chapter 13 bankruptcy is currently open), who will also receive this Notice.** If you filed for bankruptcy protection, you should consult with a bankruptcy attorney about this Notice.

If you change your address, please contact Plaintiffs' Counsel at the address provided in Section 7 below.

## 6. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

Yes. However, if you exclude yourself from the Settlement, you will **not** receive any payment from the Settlement Fund.

If you wish to receive your “Trust Loans Settlement Class Member Payment” as described in Section 4.A of this Notice, **DO NOTHING**.

If, on the other hand, you wish to exclude yourself from the Settlement, you must send a request for exclusion (“Opt Out Request”) by first-class mail, postage prepaid, to Plaintiffs’ Counsel and Counsel for the Settling Defendants (the names and addresses are provided in Section 7 below). To be effective, your request for exclusion must be **in writing** and be **received** by Plaintiffs’ Counsel and Counsel for the Settling Defendants at the addresses below on or before **February 6, 2017**. The Opt Out Request must include: (a) your name, address, telephone number and the last four digits of your social security number; (b) a statement that you and all other borrowers named on the promissory note for your loan are seeking to opt out from the Settlement; (c) your signature and the signature of any other borrower(s) named on the promissory note for your loan; and (d) a reference to “*Bertels v. U.S. Bank, National Association*, Case No. 1616-CV28515.” The Opt Out Request must be signed personally by you and any other borrower(s) named on the promissory note for your loan or the personal representative of any such person if deceased or legally incompetent. No Opt Out Request may be made on behalf of a group of Trust Loans Settlement Class members. Nor may any member(s) of the Trust Loans Settlement Class opt out or exclude themselves from the Trust Loans Settlement Class by having an agent or attorney sign and submit an Opt Out Request on their behalf. An Opt Out Request must be signed personally by you and any other borrower(s) named on the promissory note for your loan. If there is more than one borrower on your loan, all borrowers on your loan must sign and submit an Opt Out Request to exclude you from the Trust Loans Settlement Class. Your request for exclusion must be timely **received** to be effective.

If you do exclude yourself from the Settlement, you will not be bound by any Order or Judgment entered with respect to the Trust Loans Settlement Class in the Lawsuit. You will be free to continue pursuing whatever legal rights you may have against the Settling Defendants.

## 7. WHY, WHEN, AND WHERE WILL A FAIRNESS HEARING BE HELD?

A hearing on whether to grant final approval of the Settlement will be held before the Honorable **Jack Grate** of the Circuit Court of Jackson County, Missouri, at Independence (Division 17) on **March 6, 2017 at 9:00 a.m.**, at the Jackson County Courthouse, 308 W. Kansas, Independence, Missouri 64050 (the “Fairness Hearing”). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the Settlement.

The purpose of the Fairness Hearing is to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate; (b) whether the Named Plaintiffs are adequate representatives of the proposed Trust Loans Settlement Class; (c) whether

the Named Plaintiffs are entitled to a payment for their time, work, services and commitment as representatives of the Trust Loans Settlement Class and, if so, how much; (d) whether Plaintiffs' Counsel are entitled to attorneys' fees and expenses in connection with the Settlement and, if so, how much; and (e) whether a Final Approval Order and Judgment should be entered to dismiss the Lawsuit with prejudice and on the merits as to the Settling Defendants. Note: The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

### **Entry of Appearance**

Any member of the Trust Loans Settlement Class who does not submit a timely Opt Out Request has the right to appear at the Fairness Hearing. Attendance at the Fairness Hearing is not required. If you wish to appear, you or your attorney must: (a) file a Notice of Appearance with the Clerk of Court, Jackson County Courthouse, 308 W. Kansas, Independence, Missouri 64050, no later than **February 6, 2017**; and (b) serve the Notice of Appearance on Plaintiffs' Counsel and Counsel for the Settling Defendants in compliance with the Missouri Rules of Civil Procedure. The Court will consider the statements of the parties and any objections that may have been filed at the Fairness Hearing.

### **Objections**

At the Fairness Hearing, the Court will consider the statements of the parties and any objections that may have been made. Any member of the Trust Loans Settlement Class who has not submitted a timely written Opt Out Request has the right to object to the Settlement. If you wish to object to the Settlement, you must file your objection in writing with the Clerk of Court, Jackson County Courthouse, 308 W. Kansas, Independence, Missouri 64050, no later than **February 6, 2017**. All persons wishing to object must also send a copy of their written objection to Plaintiffs' Counsel and Counsel for the Settling Defendant (the names and addresses are stated below). The objection must include: (a) your name, address, and telephone number; (b) a statement of each objection to the proposed Settlement that you wish to assert; (c) a detailed description of the facts supporting each of the objections; (d) copies of any loan documents in your possession or control that you rely on as a basis for your objections; (e) the names of all witnesses, and the report(s) from any proposed experts you intend to call at the Fairness Hearing; (f) copies of any exhibits that you intend to rely on at the hearing; (g) a reference to "*Bertels v. U.S. Bank, National Association*, Case No. 1616-CV28515"; (h) a statement of whether you intend to appear at the Fairness Hearing in person or through an attorney; (i) if you are represented by an attorney, a detailed description of the legal authorities supporting each of your objections; and (j) any other matter to be raised.

The addresses for Plaintiffs' Counsel and the Counsel for the Settling Defendants are as follows:



**Plaintiffs' Counsel**

R. Frederick Walters, Esq.  
Kip D. Richards, Esq.  
Walters Bender Strohhahn & Vaughan, P.C.  
2500 City Center Square  
1100 Main Street  
Kansas City, MO 64105

**Counsel for the Settling Defendants**

Eric R. Sherman, Esq.  
Dorsey & Whitney LLP  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 55402

Any member of the Trust Loans Settlement Class who does not comply with the above requirements shall be deemed to have waived all objections to and shall be forever barred from challenging the Settlement.

**Intervention**

Any member of the Trust Loans Settlement Class who has not filed a timely Opt Out Request may request to intervene in the Lawsuit, in person or through an attorney retained at the Trust Loans Settlement Class Member's own expense. A request or motion to intervene must be in writing and reference "*Bertels v. U.S. Bank, National Association*, Case No. 1616-CV28515" and otherwise comply with the Missouri Rules of Civil Procedure and applicable law. A request to intervene must be filed with the Clerk of Court, Jackson County Courthouse, 308 W. Kansas, Independence, Missouri 64050, no later than **February 6, 2017**. Any persons wishing to intervene must also send a copy of their written request to intervene to Plaintiffs' Counsel and Counsel for the Settling Defendants at the addresses above.

**8. WHO REPRESENTS THE TRUST LOANS SETTLEMENT CLASS?**

The Trust Loans Settlement Class is represented by Plaintiffs' Counsel: R. Frederick Walters, Kip D. Richards, David M. Skeens, and J. Michael Vaughan of the law firm Walters Bender Strohhahn & Vaughan, P.C. If you have questions regarding the Settlement, this Notice or your options, you can contact Plaintiffs' Counsel without charge by writing to them at the address provided above, or by calling 1-877-472-6620 (or 816-421-6620 in the Kansas City Metro Area) or by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com) and clicking on the link "Our Cases" then "Class Action Settlements" then "2016 Trust Loans Settlement."

**9. WHAT ARE THE REASONS FOR SETTLEMENT?**

The Named Plaintiffs and the Settling Defendants have agreed to the Settlement after considering, among other things, (i) the substantial benefits to be made available to the Trust Loans Settlement Class under the Agreement; (ii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this; (iii) the difficulties and considerable delays inherent in such litigation; (iv) the vigorousness of the defenses asserted by the Settling Defendants; and (v) the desirability of consummating the Settlement promptly to provide effective relief to the Trust Loans Settlement Class.

The Settling Defendants have denied and continue to deny the claims and all allegations of wrongdoing being made against them. Nonetheless, the Settling Defendants have concluded that further litigation and a trial on the claims related to the FCMC/CFG Related Trust Loans in the Missouri Cases would be protracted, burdensome, and expensive, and that it is desirable that such claims be fully and finally settled and resolved as between the Settling Defendants and the Trust Loans Settlement Class in the manner and on the terms set forth in the Agreement.

**10. WILL THE NAMED PLAINTIFFS OR  
PLAINTIFFS' COUNSEL RECEIVE COMPENSATION?**

Yes. The Named Plaintiffs, as representatives of the Trust Loans Settlement Class, will make an application to the Court for approval of what is called an "incentive award." Such awards are made in class action lawsuits to provide an "incentive" to individuals like the Named Plaintiffs to file and prosecute class action lawsuits for the benefit of a class of people they do not know. The award also compensates the representatives of a class for their work and time as class representatives (being interviewed and deposed, reviewing documents, meeting and conferring with Class Counsel, etc.). The Named Plaintiffs will ask the Court to approve a separate incentive award of up to \$12,000.00 collectively for their time, services, expenses and dedication to the Trust Loans Settlement Class, based on the recovery to be obtained for the Trust Loans Settlement Class under the Settlement. The Settling Defendants will not object to the Named Plaintiffs' application, but the Court must still determine and approve the amount of any incentive awards to be made as "reasonable." Any incentive awards made to the Named Plaintiffs will be paid from the Settlement Fund in order to determine the "Net Settlement Fund" and "Net Distributable Settlement Fund," the latter of which will be distributed to the Trust Loans Settlement Class Members as "Trust Loans Settlement Class Member Payments" as described in Section 4 above.

Plaintiffs' Counsel has prosecuted the Missouri Cases and the Lawsuit against the Settling Defendants on a contingency fee basis and has incurred and advanced all of the costs associated with the subject MSMLA claims against the Settling Defendants for nearly sixteen (16) years. Plaintiffs' Counsel has not yet been paid for the work attributable to the claims against the Settling Defendants on the FCMC/CFG Related Trust Loans or received reimbursement for the expenses incurred or advanced on behalf of Plaintiffs and the Trust Loans Settlement Class in connection with those claims. The Court must determine and approve the amount of any such awards of attorneys' fees and litigation expenses to be made to Plaintiffs' Counsel. The amount of any such award must be reasonable based on a number of factors including, but not limited to, the nature and extent of the work involved, the difficulty of the case and the issues presented, the skill needed to conduct the case properly, the experience, reputation and ability of the lawyers, the contingency or certainty of compensation, the customary charges for similar work, and the amount involved in the controversy and the benefits resulting to the client, in this case the Trust Loans Settlement Class Members.

Based on these and other factors, and as a part of the Settlement, Plaintiffs' Counsel and/or the Named Plaintiffs will make an application to the Court to approve and award up to \$38,267.91 to reimburse Plaintiffs' Counsel for the costs and expenses incurred and advanced on behalf of the

Trust Loans Settlement Class in connection with the Missouri Cases and the Lawsuit from June 8, 2000 through October 10, 2016. The \$38,267.91 amount represents approximately 11.6% of the \$329,505.72 in total costs and expenses that Plaintiffs' Counsel have incurred and advanced in connection with the Missouri Cases through October 10, 2016. The \$38,267.91 amount represents an allocable share of the "common" costs and expenses fairly attributable to the claims against all defendants calculated on a per loan basis, plus all of the expenses and advances directly attributable to the claims against the Settling Defendants alone. The Settling Defendants will not object to the proposed award of costs and expenses, but the Court must still consider and approve the amount of the proposed award as "reasonable." Like any incentive award made to the Named Plaintiffs, the amount of any expense award to Plaintiffs' Counsel will be paid from the Settlement Fund in order to determine the "Net Settlement Fund" and "Net Distributable Settlement Fund" as described in Section 4 above.

Plaintiffs' Counsel and/or the Named Plaintiffs will also make an application to the Court to approve and award \$877,379.44 of attorneys' fees to Plaintiffs' Counsel for their services and work in the Missouri Cases and in pursuing the Lawsuit against the Settling Defendants, and in procuring the \$2 million Settlement Fund for the Trust Loans Settlement Class. The Settling Defendants will not object to the proposed award of attorneys' fees, but the Court also must still determine and approve the amount of any such award to be made to Plaintiffs' Counsel as "reasonable" based on a number of factors including, but not limited to, the nature and extent of the work involved, the difficulty of the case and the issues presented, the skill needed to conduct the case properly, the experience, reputation and ability of the lawyers, the contingency or certainty of compensation, the customary charges for similar work, the amount involved in the controversy, and the benefits to the client.

If approved by the Court, the \$877,379.44 amount will constitute forty-five percent (45%) of the Net Settlement Fund and the amount of any such award made to Plaintiffs' Counsel will be deducted and paid from the Net Settlement Fund to calculate the Net Distributable Settlement Fund to be distributed to the Trust Loans Settlement Class Members, which as proposed will equal fifty-five percent (55%) of the Net Settlement Fund. Under this proposal, the amount of the Net Settlement Fund to be paid to the Trust Loans Settlement Class Members will compensate the Trust Loans Settlement Class Members for the following: (1) all (100%) of the allegedly illegal loan fees sought in the Lawsuit; (2) all (100%) or in twelve (12) instances, nearly all (80%-99%) of the interest that the Class Members paid on their second mortgage loans; and (3) in all but those same twelve (12) instances, a portion of the prejudgment interest accruing on the fee and interest amounts at the legal rate of 9% per year, calculated from the date of the Note and interest payment date.<sup>1</sup>

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<sup>1</sup> The loan documents produced in the Lawsuit show that one (1) of the FCMC/CFG Related Trust Loans does not violate the prohibitions on excessive fees in § 408.233.1 RSMo. Notwithstanding the lack of any such statutory violation, the Settling Defendants have agreed to pay \$250 on this loan in the interest of obtaining a full and final settlement. This payment will be made to the members of the Trust Loans Settlement Class who obtained the loan, provided the class members do not timely exclude themselves from the Settlement.

The Named Plaintiffs and Plaintiffs' Counsel believe that the percentage fee amount and amount of the attorneys' fees being proposed as a part of the Settlement are reasonable for a number of reasons including, among others, the considerable length and complexity of the case, the nature and extent of the legal work provided by Plaintiffs' Counsel in connection with the claims against the Settling Defendants, the defenses raised by the Settling Defendants in response to the claims, the commitment of and work performed by Plaintiffs' Counsel in prosecuting and continuing to prosecute the claims, the contingency fee percentages charged and/or approved in similar cases in the community, the timing of the Settlement, the amount and risks involved in this controversy, the attorneys' fees previously awarded to Plaintiffs' Counsel pursuant to other settlements, the extraordinary benefits obtained for the members of the Trust Loans Settlement Class, including but not limited to the fact that the Trust Loans Settlement Class will receive all or nearly all of the recoverable fee and interest damages, plus prejudgment interest in most instances, under the Settlement.

The range and average of the Trust Loans Settlement Class Member Payments described in Section 4 of this Notice have been estimated with the expectation that the Court will approve as reasonable the applications for the above stated incentive, expense and attorneys' fees awards. If the Court approves an incentive award or awards costs and expenses or attorneys' fees in amounts that are less than that applied for, the difference will be reallocated to the Net Settlement Fund or the Net Distributable Fund, as applicable.

#### **11. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?**

If approved by the Court and effective in accordance with its terms, the proposed Settlement will be legally binding upon all members of the Trust Loans Settlement Class who do not timely request to be excluded from the Trust Loans Settlement Class. The Settlement will fully, finally and forever release, settle, compromise, relinquish and discharge any and all of the Released Persons, as defined in the Agreement, from the Released Claims, as defined in the Agreement, as of the Effective Date.

The Releases mean that you as a "Releasor" cannot bring any lawsuit against the Settling Defendants or any of the other "Released Persons" identified in the Agreement for any reason whatsoever relating to the "Released Claims," as defined in the Agreement. You will of course be able to enforce your rights under the Agreement, if necessary.

Accordingly, if you are currently litigating any other claims against the Settling Defendants or any other "Released Person" in any lawsuit or proceeding other than the Missouri Cases, either individually or as part of a class, you may be barred from continuing to pursue those claims if you do not timely exclude yourself from the Trust Loans Settlement Class in this case. If you are currently litigating any such claims, you should consult with an attorney concerning your rights and claims immediately.

The term “**Releasers**” is defined in the Agreement at Section 2.31 as:

[A]ll Trust Loans Settlement Class Members including, without limitation, Named Plaintiffs Joseph R. Bertels, Jr. and Sharon M. Bertels, and their respective heirs, executors, administrators, assigns, predecessors and successors, and any other person claiming by or through any of them. The Releasers do not include any of the following: (a) the Non-Trust Loan Plaintiff Borrowers including, without limitation, Named Plaintiffs James C. Baker and Jill S. Baker Weyrauch, Jeffrey A. Cox and Michelle A. Cox, and William L. Springer and Linda A. Springer Babcock, who are executing this Agreement solely on behalf of the Trust Loans Settlement Class, and not individually; (b) any person other than those persons identified on **Exhibit D** and said persons’ respective heirs, executors, administrators, assigns, predecessors and successors, and any other person claiming by or through any of them; and (c) any members of the Trust Loans Settlement Class who opt out of the Settlement in accordance with Section 10 below. The Parties understand that the releases to be given by the Releasers release the Released Persons from the Released Claims, nothing more and nothing less.

The term “**Released Persons**” is defined in the Agreement at Section 2.32 as:

(a) the Settling Defendants, each in its individual capacity, together with the affiliates, parent companies and subsidiaries listed on **Exhibit E**; (b) Keystone Grantor Trust 1998-P2, Keystone Owner Trust 1998-P2 and Mego Mortgage Home Loan Owner Trust 1997-1 (the “Active Trusts”), together with (i) all related trusts that are beneficially owned by the Active Trusts and any trust indenture arrangements evidenced by any Indenture for which U.S. Bank National Association served as indenture trustee in a Representative Capacity as of the date of this Agreement, (ii) the trustees of the Active Trusts solely in their relevant Representative Capacities under the Trust Documents for the Active Trusts, and not individually, whether as trustee, co-owner trustee, owner trustee, grantor trustee, indenture trustee, paying agent, administrator or otherwise, relating to the administration of any of the Active Trusts or its assets or to the extent of serving any other role under the applicable Trust Documents; (c) all Trust Investors and all underwriters of any securities issued by the Active Trusts to past or present Trust Investors, but solely as to the FCMC/CFG Related Trust Loans; (d) Bayview Financial Acquisition Trust 1998-B, Keystone Owner Trust 1998-P1, the Master Financial Asset Securitization Trusts 1997-1, 1998-1 and 1998-2, Mego Mortgage Home Loan Owner Trusts 1997-2 and 1997-4, TMI Home Loan Trust 1998-A and United National Home Loan Owner Trust 1999-2 (the “Terminated Trusts”) along with (i) all trust indenture arrangements evidenced by any indenture to which the Terminated Trusts were parties; (ii) U.S. Bank National Association and Wilmington Trust Company in their individual capacities and in their relevant Representative Capacities on behalf of the Terminated Trusts, related trust indenture arrangements, or any registered or beneficial holders of any residual interest, certificate or note issued by any of the Terminated Trusts; and (iii) all registered or beneficial holders of any residual interest, certificate or note issued by any of the Terminated Trusts; (e) all other trustees, co-owner trustees, grantor trustees, indenture trustees, paying agents, administrators, loan servicers and other entities who provided services to the Trusts or who served any role under the applicable Trust Documents, but solely as to the FCMC/CFG Related Trust Loans; and (f) the Released Persons’ respective past and present officers, directors, shareholders, employees, attorneys (including any consultants hired by counsel), accountants, insurers, indemnitors, heirs, executors, and administrators, and any

predecessors, successors, and assigns. Notwithstanding anything in this Agreement to the contrary, the term Released Persons **does not include any of the following**: (a) the Originating Lenders, (b) Wilmington Trust Company, or any of the companies listed on **Exhibit E**, or any predecessors, successors or assigns, individually or in any Representative Capacities, as the trustee or owner trustee of any trusts other than the Trusts or individually as the purchaser, assignee, owner or holder, servicer and/or master servicer of, of the recipient of money on, any loans other than the thirty-nine (39) identified FCMC/CFG Related Trust Loans; (c) the Master Financial Defendants, or any of them, for any loan other than the FCMC/CFG Related Trust Loans or any obligations or debts other than those relating to or arising from the FCMC/CFG Related Trust Loans; (d) UBS Real Estate Securities Inc., individually or as the successor by merger to PaineWebber Real Estate Securities, Inc., for any loans, The Bank of New York Mellon (f/k/a The Bank of New York), for any loans, JP Morgan Chase Bank, NA, for any loans, and any other current or former defendant named in the Missouri Cases unless a Released Person; (e) the Settling Defendants, or any of them, or any other Released Person, for any loan other than the FCMC/CFG Related Trust Loans or any obligations or debts other than those relating to or arising from the thirty-nine (39) FCMC/CFG Related Trust Loans; (f) any person, association or entity, other than the Released Persons, that purchased, owned, held, received, serviced or collected any of the FCMC/CFG Related Trust Loans including but not limited to any Person to whom any of the Settling Defendants sold, assigned, transferred or conveyed any of the FCMC/CFG Related Trust Loans, and any Person who serviced or collected said Loans after they were sold, assigned, transferred or conveyed by a Settling Defendant; (g) the purchasers, assignees, owners/holders, trustees or servicers of the Non-Trust Loan Plaintiff Borrowers' loans for any loans other than the FCMC/CFG Related Trust Loans or any obligations or debts other than those relating to or arising from the FCMC/CFG Related Trust Loans; (h) any of the above non-released persons' respective past and present officers, directors, shareholders, employees, attorneys (including any consultants hired by counsel), accountants, insurers, indemnitors, heirs, executors, and administrators, and any predecessors (unless a Released Person), successors, and assigns.

The term "**Released Claims**" is defined in the Agreement at Section 2.33 as:

[A]ny and all claims, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, liens, costs, surcharges, losses, attorney's fees, expenses or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever in connection with the FCMC/CFG Related Trust Loans, including monetary, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential or punitive damages, as well as any and all claims for treble damages, penalties, interest, sanctions, attorney's fees, costs or expenses, whether known or unknown, alleged or not alleged in the Missouri Cases or the Litigation, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that **in any way concern, relate to, or arise out of the FCMC/CFG Related Trust Loans and** which any of the Releasers have had, or now have, from the beginning of time up through and including the Effective Date, against the Released Persons ("Claims"), including but not limited to, any and all claims arising out of or relating to: (1) allegations that were or could have been asserted against the Released Persons in the Missouri Cases or the Litigation in any way relating to the Trust Loans Settlement Class Members' FCMC/CFG Related Trust Loans; (2) any activities of the Released Persons with

respect to the FCMC/CFG Related Trust Loans including, without limitation, any alleged representations, misrepresentations, disclosures, incorrect disclosures, failures to disclose, acts (legal or illegal), omissions, failures to act, deceptions, acts of unconscionability, unfair business practices, breaches of contract, usury, unfulfilled promises, breaches of warranty or fiduciary duty, conspiracy, aiding or abetting, excessive fees collected, or violations of any consumer protection statute, any state unfair trade practice statute, or any other body of case, statutory or common law rule or regulation, federal or state, including but not limited to the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. § 408.231, *et seq.* RSMo, or any other similar state statute; the Truth in Lending Act, 15 U.S.C. § 1601, *et seq.*, and its implementing regulations, 12 C.F.R. part 226; the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, *et seq.*, and its implementing regulation, 12 C.F.R. part 226.31-32; the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, and its implementing regulation, 24 C.F.R. part 3500; the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, and its implementing regulation, 12 C.F.R. part 202; the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, *et seq.*, and its implementing regulation, 12 C.F.R. part 203; the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*; the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.*, the Federal Trade Commission Act, 15 U.S.C. §§ 45, *et seq.* and any applicable rule issued by the Consumer Financial Protection Bureau or applicable provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and/or (3) any conduct undertaken by any of the Released Persons to defend the Missouri Cases or the Litigation, including but not limited to, any alleged improper discovery conduct and/or any request for sanctions. It is the intention of the Releasers to provide a general release of the Released Claims against the Released Persons with regard to the FCMC/CFG Related Trust Loans only; provided, however, that anything in this Agreement to the contrary notwithstanding, the term Released Claims **does not include**: (1) any claims of any kind or type by any Releasor, whether or not currently asserted in the Missouri Cases or Litigation, against any person, association or entity including, but not limited to, the Settling Defendants and other Released Persons, in connection with any loan other than an FCMC/CFG Related Trust Loan and/or any obligations or debts other than those relating to or arising from the FCMC/CFG Related Trust Loans; (2) any and all claims of any kind or type by any Releasor against any person, association or entity that is not a Released Person, whether such claims arise out of or relate to any FCMC/CFG Related Trust Loan or some other transaction, loan or occurrence including but not limited to any and all claims and causes of action under the Missouri Second Mortgage Loans Act, Mo.Rev.Stat. §§ 408.231, *et seq.* RSMo, or any other state or federal law against any Person to whom any of the Settling Defendants sold, assigned, transferred or conveyed any of the FCMC/CFG Related Trust Loans, and any Person who serviced or collected said Loans after they were sold, assigned, transferred or conveyed by a Settling Defendant; and/or (3) any claims of whatever type by any Non-Trust Loan Plaintiff Borrower or any other person who is not a Releasor as defined in this Agreement.

## **12. WHAT IF THE SETTLEMENT IS NOT APPROVED BY THE COURT OR DOES NOT BECOME EFFECTIVE?**

If the proposed Settlement is not approved by the Court at the Fairness Hearing as fair, reasonable and adequate, or if the Settlement does not become effective in accordance with the terms and conditions of the Agreement, the Settlement and the Agreement will be null and void

and the Named Plaintiffs will proceed with their claims against the Settling Defendants and other Defendants in the Missouri Cases. In that event, no payments will be made under the terms of the Agreement; however, the Settling Defendants and the Named Plaintiffs could attempt to enter into another settlement.

### **13. WHERE DO I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement and does not describe all of the terms and conditions of the Agreement. You are encouraged to review the Agreement and other related documents, all of which are available upon request from Plaintiffs' Counsel, or by visiting the website of Plaintiffs' Counsel, [www.wbsvlaw.com](http://www.wbsvlaw.com) and clicking on the link "Our Cases" then "Class Action Settlements" then "2016 Trust Loans Settlement."

### **14. WHAT ARE THE RELEVANT DATES?**

The relevant dates are:

- **Deadline for mailing a request for exclusion (an "Opt Out Request") (must be received by): February 6, 2017**
- **Deadline for filing and serving any notice of appearance, written objection, or motion to intervene (must be received by the court by): February 6, 2017**
- **Date and time of the Fairness Hearing: March 6, 2017 at 9:00 a.m.**

This Notice provides only a summary of matters about the Lawsuit. If you have any questions or concerns, please contact Plaintiffs' Counsel in writing at the address listed in Section 7 of this Notice or call 816-421-6620.

**PLEASE DO NOT CALL OR CONTACT THE COURT FOR INFORMATION.**

**This notice is sent pursuant to Rule 52.08  
of the Missouri Rules of Civil Procedure  
and BY ORDER OF THE COURT**

DATED: December 9, 2016