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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARY LABRADOR, individually and on)	Case No. 08-2270 SC
behalf of all others similarly)	
situated,)	ORDER GRANTING FINAL
)	APPROVAL OF CLASS ACTION
Plaintiff,)	<u>SETTLEMENT</u>
)	
v.)	
)	
SEATTLE MORTGAGE COMPANY,)	
)	
Defendant.)	
)	
)	

Before the Court is Plaintiff Mary Labrador's Motion for Final Approval of Class Action Settlement, ECF No. 117 ("Mot. for Final Approval"), which Defendant Seattle Mortgage Bank ("SMC") supports, ECF Nos. 115, 116, 119. At the January 7, 2011 hearing on the motion, the Court continued the motion to March 4, 2011, instructing the parties to continue efforts to perfect notice on the 806 Class Members who had not yet received notice of the Settlement. ECF No. 118. In a January 14, 2011 order, the Court stated that it would grant final approval of the Settlement in advance of the March 4, 2011 hearing if the parties stipulated to an amended Settlement Agreement that protected the rights of these unnoticed Class Members. ECF No. 121. The parties have since filed a stipulation in which they state that 813 Class Members --

United States District Court
For the Northern District of California

1 rather than 806 -- have not received notice of the Settlement, and
2 they agree to undertake additional steps to provide notice to these
3 Class Members. ECF No. 122. Specifically, the parties agree to
4 withhold a portion of the Settlement for these unnoticed Class
5 Members, send a new Notice of Settlement to these unnoticed Class
6 Members, and provide them with additional time to opt out of or
7 object to the Settlement. Id.

8 In light of this stipulation, and having reviewed the
9 documents and good cause appearing, the Court GRANTS the Motion
10 subject to the following conditions, and ORDERS, ADJUDGES, and
11 DECREES as follows:

12 1. The Court has jurisdiction over the subject matter of
13 this action and over all parties hereto, including the members of
14 the Settlement Class.

15 2. The Court certifies the following Settlement Class:

16 All elders, meaning any individual who was 65
17 years of age or older at the time his or her
18 Home Equity Conversion Mortgage closed, who,
19 prior to June 20, 2007, entered into a Home
20 Equity Conversion Mortgage through a loan
21 correspondent sponsored by SMC and whose claims
22 are not time-barred. Excluded from the class
23 is anyone whose Home Equity Conversion Mortgage
24 was discharged through bankruptcy, or whose
25 bankruptcy petition is pending as of the date
26 the Settlement becomes final.

27 3. The Court previously certified a California-only class.
28 ECF No. 97. In the order granting class certification, the Court
found that the action satisfied the requirements of Rules 23(a) and
(b)(3) of the Federal Rules of Civil Procedure. Id. The expanded
Settlement Class likewise meets the requirements of Rule 23(a):

a. The Class includes about 11,638 individuals and is so
numerous that joinder of all members is impracticable;

- 1 b. There are questions of law and fact common to the Class;
2 c. The claims of Representative Plaintiff Mary Labrador
3 ("Representative Plaintiff") are typical of the claims of
4 the Class; and
5 d. The Representative Plaintiff will fairly and adequately
6 protect the interests of the Class.

7 4. The Settlement Class also meets the requirements for
8 certification as a class under Rule 23(b)(3) of the Federal Rules
9 of Civil Procedure, in that questions of law and fact common to the
10 members of the Class predominate over any questions affecting only
11 individual members, and a class action is superior to other
12 available methods for the fair and efficient adjudication of this
13 controversy.

14 5. The Settlement Agreement was reached through arms-length,
15 adversary bargaining between the parties. There has been no
16 collusion between the parties in reaching the settlement.

17 6. Before entering into the settlement, the parties engaged
18 in sufficient investigation and discovery regarding the claims
19 Plaintiff alleged to allow counsel to act knowledgeably in
20 negotiating the settlement and to allow the Court to act
21 intelligently in weighing its fairness.

22 7. Mary Labrador is an adequate class representative and has
23 fulfilled her obligations to the Court and to the Class.

24 8. The Court appoints Mark A. Chavez and Nance F. Becker of
25 Chavez & Gertler LLP and Mark T. Johnson, Todd Schneider and
26 Garrett Wotkyns of Schneider Wallace Cottrell Brayton Konecky LLP
27 as class counsel, finding that they have the experience and
28 qualifications necessary to represent the Class.

1 9. The Settlement Agreement executed by the parties provides
2 substantial benefits to the Class Members in the form of monetary
3 relief and protection against future harm. The Settlement provides
4 for the establishment of a \$4 million Qualified Settlement Fund to
5 be funded by payment from SMC's insurance policy with Colonial
6 American. Mot. for Final Approval at 6-7. The Settlement
7 Administrator estimates that the total cost for this project will
8 be \$56,128. When all administrative costs and such attorneys'
9 fees, costs, expenses, and service award as may be approved by the
10 Court are paid, the balance of the Settlement Fund will be
11 distributed to the Settlement Class Members in the same proportion
12 that the origination fee imposed on each Class Member upon the
13 closing of his or her loan bears to the total origination fees
14 imposed on all members of the Class. Id. The parties estimate
15 that Class Members will receive an average of \$370 under the
16 settlement. Id.

17 10. With the exception of the 813 unnoticed Class Members,
18 the members of the Settlement Class have been provided with
19 adequate notice of the settlement terms. The notice given to the
20 members of the Settlement Class adequately disclosed the terms and
21 effect of the Settlement, including the requested attorneys' fee
22 and service award, was the best notice practicable under the
23 circumstances, and was reasonably calculated to communicate actual
24 notice of the litigation and the proposed settlement to class
25 members, and otherwise met the requirements of all applicable
26 laws.¹

27 _____
28 ¹ Because the parties admit that notice to the Class provided
incorrect deadlines for Class Members to opt out and object, the

1 11. With the exception of the 813 unnoticed Class Members,
2 class members were given an adequate opportunity to object to the
3 terms of the settlement. No objections were received.

4 12. With the exception of the 813 unnoticed class members,
5 class members were given an adequate opportunity to request to be
6 excluded from the Settlement. Six members have elected to be
7 excluded. The names and addresses of those members who have opted
8 out of the settlement are set forth in Exhibit A hereto.

9 13. Based on the foregoing, the Settlement Agreement is
10 hereby approved as fair, reasonable, and adequate.

11 14. The Representative Plaintiff and all members of the
12 Settlement Class, except the individuals who elected to be excluded
13 (identified in Exhibit A hereto) and the 813 unnoticed Class
14 Members, hereby release any and all actual or potential claims,
15 counterclaims, actions, causes of action, liabilities, damages
16 (whether actual, nominal, punitive, exemplary, statutory, or
17 otherwise), injunctive relief, costs, fees, attorneys' fees, or
18 penalties of any kind, whether known or unknown, suspected or
19 unsuspected, discovered or undiscovered, which arise in whole or in
20 part from SMC's charging Home Equity Conversion Mortgage customers
21 in California, Florida, Hawaii, Michigan, Minnesota, Missouri, New
22 Jersey, Nevada, Ohio, Pennsylvania, Rhode Island and Washington
23 Loan Origination Fees when (a) the Loan Origination Fee was
24 conveyed, in whole or in part, to a loan correspondent or broker,
25 and (b) the loan correspondent or broker was also paid a
26 "correspondent," "broker" or "service release premium" fee by SMC.

27 _____
28 Court deems timely any elections to opt out that were postmarked by
December 24, 2010 and any objections to the Settlement filed on or
before December 31, 2010.

1 In addition to SMC, this release includes SMC's parent corporation
2 Seattle Bank, its officers, directors, shareholders, employees,
3 insurers, attorneys and assigns, and its successors (including any
4 persons or entities that may acquire all or substantially all of
5 its assets, stock or other ownership interests). Also released are
6 any claims against Bank of America or any individual or entity
7 affiliated therewith that arise, directly or indirectly, out of the
8 Released Claims.

9 15. Defendant shall not, for a period of three years or such
10 shorter time as Department of Housing and Urban Development
11 regulation 24 CFR §206.31(a)(1) or its terms remain in effect,
12 charge any homeowner a loan origination fee in connection with a
13 Home Equity Conversion Mortgage loan when a correspondent fee is
14 paid to the homeowner's mortgage broker in connection with the same
15 Home Equity Conversion Mortgage loan. SMC shall also comply with
16 all of its other obligations pursuant to the Settlement Agreement.
17 The Court shall and hereby does retain jurisdiction over the
18 interpretation, implementation, and enforcement of the Settlement
19 Agreement, this Final Settlement Approval Order, and the Judgment.

20 16. This final approval of the Settlement is subject to the
21 following conditions:

- 22 a. The third party administrator, Rust Consulting, shall
23 withhold \$273,168, or such similar amount that can be
24 calculated to reflect the amounts allocated to the 813
25 unnoticed Class Members under the terms of the Settlement
26 Agreement, from distribution to the Class Members who
27 received the Notice;
- 28 b. Rust Consulting shall employ more extensive attempts to

1 provide notice to the 813 unnoticed Class Members, above
2 and beyond the change-of-address procedure already
3 utilized, and shall send a new notice of Settlement ("New
4 Notice") to any new addresses it obtains;

5 c. The New Notice shall provide the unnoticed class members
6 with an additional thirty-five days from date of mailing to
7 opt out of the Settlement or to object to the Settlement or
8 Class Counsel's Motion for Attorneys' Fees, and shall
9 advise the unnoticed class members that the Court shall
10 hold a hearing on the Settlement on March 4, 2011, at which
11 any of the unnoticed class members who filed timely
12 objections may appear and be heard. No less than seven
13 days before the March 4, 2011 hearing, the parties shall
14 submit a declaration from Rust Consulting detailing the
15 additional steps taken to provide notice to the 813
16 unnoticed Class Members, as well as the results of these
17 additional steps;

18 d. This Order granting Final Approval of the Settlement is
19 fully enforceable by the parties, and Defendant is hereby
20 deemed immediately released by all Class Members of any
21 liability to said Class Members pursuant to the terms of
22 the Settlement, save and except for potential claims by the
23 813 unnoticed Class Members. Any timely objections filed
24 by any of the 813 unnoticed Class Members shall affect the
25 813 unnoticed Class Members only, and shall not affect the
26 validity or enforceability of the Settlement as to any of
27 the other Class Members including, but not limited to, the
28 release of Defendant by all other Class Members pursuant to

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the terms of the Settlement;

e. The Court shall rule on March 4, 2011, or at such later date as the Court decides appropriate, the manner in which the funds allocated to the 813 unnoticed Class Members shall be distributed. Because the number of the 813 unnoticed Class Members who ultimately receive notice will affect the amount to be paid to all Class Members, no distributions shall be made to any Class Members until the Court makes this ruling. The Court also defers ruling on Plaintiff's Counsel's Motion for Attorneys' Fees, to provide the unnoticed Class Members with the opportunity to object to the motion.

IT IS SO ORDERED.

Dated: January 19, 2011


UNITED STATES DISTRICT JUDGE

COR #	Name of Submitter	Name 2 of Submitter	Address	City	State	Zip
6	NORMA HART		10454 DESCHUTES RD	PALO CEDRO	CA	96073
7	JAMES DUKE		375 MAXWELL AVE	OAKDALE	CA	95361
12	MARGUERITE FERREIRA		22391 SIOUX RD	APPLE VALLEY	CA	92308
24	ANA PEREZ		1727 GAMMA ST	NATIONAL CITY	CA	91950
25	JAMES & MARY BUTCHER		33287 AVE BICICLETA	TEMECULA	CA	92592
29	ANDREW BANKHEAD		237 SYCHAR RD	SAN DIEGO	CA	92114