

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT

MAY 17 2010

CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

ALFREDO B. PAYARES, ZINNIA
GONZALEZ, and GREGORY
WALKER,

Plaintiffs,

v.

CHASE BANK USA, N.A., and
JPMORGAN CHASE BANK, N.A.,

Defendants.

Case No. CV 07-05540 AG (ANx)

~~PROPOSED~~ ORDER OF
PRELIMINARY APPROVAL OF
SETTLEMENT

Ctrm: 10D
Judge: Hon. Andrew J. Guilford

[PROPOSED] ORDER OF PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

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3 Plaintiffs, on behalf of themselves and the Class Members, and the
4 Defendants Chase Bank USA, N.A. and JPMorgan Chase Bank, N.A. (collectively,
5 “Chase”) in this case (together, the “Parties”), entered into a Settlement Agreement,
6 providing for a proposed settlement (the “Settlement”) of this Action. A copy of
7 the Settlement Agreement and its exhibits was previously submitted to the Court in
8 connection with Plaintiffs’ Motion for Preliminary Approval.

9 Plaintiffs have moved for, and Defendants have indicated that they do not
10 oppose, entry of this Order, which, *inter alia*, (i) provides for notice to affected
11 persons, (ii) establishes a procedure for filing of objections to the Settlement, and
12 (iii) schedules a hearing for final approval of the Settlement. After due
13 consideration,

14 IT IS ORDERED THAT:

15 1. This Order incorporates by reference the definitions in the Settlement
16 Agreement, and all capitalized terms used in this Order will have the same
17 meanings as set forth in the Settlement Agreement, unless otherwise defined in this
18 Order.

19 2. Based on the Court’s review of the Settlement Agreement, the
20 supporting briefs and declarations, argument of counsel, and the entire record,
21 including Defendants’ statement of non-opposition, the Court finds that the
22 proposed Settlement is within the range of possible approval. The Plaintiffs’
23 Motion for Preliminary Approval of the Settlement Agreement is granted.

24 3. If, for any reason, the Settlement is not finally approved or does not
25 become effective, this provisional approval and class certification Order shall be
26 null and void, and shall not be used or referred to for any purpose in this Action or
27 any other action or proceeding.
28

1 4. Solely for the purpose of settlement in accordance with the Settlement
2 Agreement, and pursuant to Fed. R. Civ. P. 23(a) and (b)(3) of the Federal Rules of
3 Civil Procedure, this Court hereby provisionally approves the following settlement
4 class (“Settlement Class”):

5 All African-American and Hispanic borrowers who, since
6 August 23, 2005, obtained a mortgage loan originated
7 through Chase’s wholesale channel.

8 5. For settlement purposes only, and after considering the relevant factors
9 in Fed. R. Civ. P. 23, the Court conditionally designates Class Representatives
10 Alfredo B. Payares, Zinnia Gonzalez, and Gregory Walker as representatives of the
11 Settlement Class, and Class Counsel are conditionally appointed as counsel for the
12 Settlement Class. The law firms and attorneys conditionally representing the
13 Settlement Class are:

14 Theodore J. Pintar
15 COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
16 655 West Broadway, Suite 1900
17 San Diego, CA 92101

18 Gary E. Klein
19 RODDY KLEIN & RYAN
20 727 Atlantic Ave. 2d Floor
21 Boston, MA 02111

22 Andrew S. Friedman
23 BONNET FAIRBOURN FRIEDMAN & BALINT P.C.
24 2901 N. Central Avenue, Suite 1000
25 Phoenix, AZ 85012

26 Mark A. Chavez
27 CHAVEZ & GERTLER LLP
28 42 Miller Avenue
 Mill Valley, CA 94941

 Donna Siegel Moffa
 BARROWAY TOPAZ KESSLER MELTZER & CHECK, LLP
 280 King of Prussia Road
 Radnor, PA 19087

 Jeffrey L. Taren
 KINOY TAREN & GERAGHTY P.C.
 224 S. Michigan Avenue, Suite 300
 Chicago, IL 60604

1 6. Chase is hereby authorized to retain Tilghman & Co., P.C., 3415
2 Independence Drive, Suite 102, Birmingham, Alabama 35209, as Settlement
3 Administrator to administer the notice procedures and other aspects of this
4 proposed Settlement, as more fully set forth in the Settlement Agreement.

5 7. A hearing (the Fairness Hearing) shall be held before this Court on
6 September 13, 2010, at 10:00 a.m., to hear objections and determine: (i) whether
7 the proposed Settlement and compromise of this Action as set forth in the
8 Settlement Agreement is fair, reasonable, and adequate for the Class Members and
9 should be approved by the Court; (ii) whether the Final Judgment should be entered
10 approving the Settlement; (iii) whether to approve the request of Class Counsel for
11 payment of attorneys' fees and reimbursement of expenses; and (iv) whether to
12 approve the request of Class Representatives for service payments. Notice of such
13 hearing shall be provided to Class Members in the fashion described in section 3.3
14 of the Settlement Agreement. Such notice shall be substantially in the form of
15 Exhibits B, C, and D hereto, as appropriate, and shall be mailed on or before June
16 16, 2010.

17 8. Any interested person may appear at the Fairness Hearing to show
18 cause why the proposed Settlement should or should not be approved as fair,
19 reasonable, adequate, and in good faith and/or why the request of Class Counsel for
20 approval of attorneys' fees and reimbursement of litigation-related expenses should
21 or should not be approved as fair and reasonable and/or why the request of Class
22 Representatives for approval of service payments should or should not be approved
23 as fair and reasonable; provided, however, that no person shall be heard or entitled
24 to contest the approval of the terms and conditions of the proposed Settlement, the
25 fees, costs, and reimbursements requested by Class Counsel, or the service
26 payments requested by Class Representatives, unless that person (i) has sent or
27 delivered written objections and copies of any supporting papers and briefs so that
28 they are received no later than July 30, 2010, to counsel below:

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Theodore J. Pinter
Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Fax: (619) 231-7423

Counsel for Plaintiffs

-and-

Michael J. Agoglia
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Fax: (415) 268-7522

Counsel for Defendants Chase Bank USA, N.A. and
JPMorgan Chase Bank, N.A.

and (ii) has filed said objections, papers, and briefs, showing proof of service upon said counsel, with the Clerk of the United States District Court for the Central District of California, 411 W. Fourth Street, Santa Ana, California, on or before the same date. Any Class Member who does not submit an objection in the manner provided above shall be deemed to have waived any objection to the Settlement and shall forever be foreclosed from making any objection to class certification, to the fairness, adequacy, or reasonableness of the Settlement, to any attorneys' fees and reimbursements approved, and to any service payments to the Class Representatives approved.

9. Any Class Member who wishes to be excluded from the Settlement Class and not be bound by the Settlement Agreement must mail a request for exclusion ("Opt-Out") to the Settlement Administrator, postmarked no later than July 30, 2010. For a Class Member's Opt-Out to be valid, it must be timely (as judged by the postmark deadline set forth above) and: (a) state the name of this lawsuit, *Payares v. Chase Bank U.S.A., N.A.*, Case No. 07-05540; (b) state the Class Member's full name and address; (c) contain the Class Member's signature; and (d) unequivocally state the Class Member's intent to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the

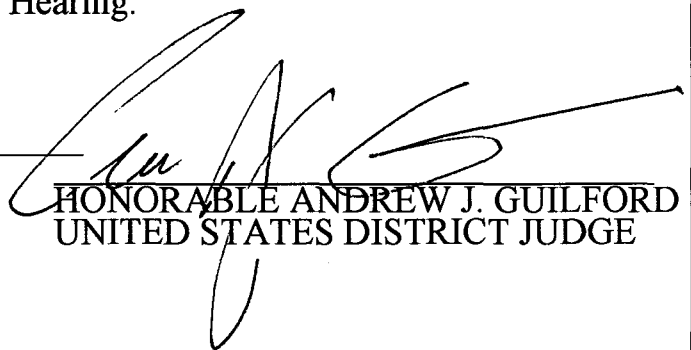
1 Settlement, and/or to waive all right to the benefits of the Settlement. Any Class
2 Member who does not submit a timely Opt-Out, and otherwise comply with all
3 requirements for requesting exclusion from the Settlement Class as set forth above
4 and in the Class Notice, shall be bound by the Settlement Agreement, including the
5 Release, as embodied in sections 4.1, 4.2, and 4.3 of the Settlement Agreement, and
6 any Final Judgment entered in the Action. Further, any Class Member who is a
7 successful Opt-Out will be deemed to have waived any rights or benefits under the
8 Settlement, and will not have standing to object to the Settlement or to seek to
9 intervene in the Action.

10 10. All memoranda, affidavits, declarations, and other evidence in support
11 of the request for approval of the Settlement, Class Counsel's request for approval
12 of attorneys' fees, costs, and reimbursement of expenses, and Class
13 Representatives' request for approval of service payments shall be filed on or
14 before September 3, 2010.

15 11. The Court expressly reserves its right to adjourn the Fairness Hearing
16 from time to time without further notice other than to counsel of record and to
17 approve the proposed Settlement and request for approval of attorneys' fees and
18 expenses and request for approval of Class Representative service payments at or
19 after the originally scheduled Fairness Hearing.

20 IT IS SO ORDERED.

21 Date: May 17, 2010 _____


HONORABLE ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE

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