

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

GREGORY YOUNG, et al.,

Plaintiffs,

v.

WELLS FARGO & CO., and
WELLS FARGO BANK, N.A.,

Defendants.

Case No. 4:08-cv-00507-RP-CFB

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR
DISTRIBUTION OF NET SETTLEMENT FUND**

Plaintiffs Edward R. Huyer, Jr., Connie Huyer, Carlos Castro, and Hazel P. Navas-Castro (“Plaintiffs”) respectfully submit this memorandum in support of their motion for an Order pursuant to Federal Rule of Civil Procedure 23(e) that would approve the proposed plan for distributing the Net Settlement Fund¹ to eligible members of the Class. In support of the motion, Plaintiffs have filed the Declaration of Jennifer M. Bareither in Support of Motion for Distribution of Net Settlement Fund (the “Bareither Decl.”). Ms. Bareither is the Director of Operations at Garden City Group, LLC (“GCG”), the Court-appointed Claims Administrator for the Settlement. Defendants have stated that they take no position on Plaintiffs’ motion.

¹ Unless otherwise defined, all capitalized terms used herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated August 21, 2015 (“Stipulation”) (ECF No. 243-3) previously filed with the Court, and the Bareither Declaration.

SETTLEMENT BACKGROUND

Plaintiffs, on behalf of themselves and the Class, and Defendants (collectively, the “Parties”) entered into the Stipulation wherein the Parties agreed, in substance, that in exchange for \$25,750,000 in cash (the “Settlement Fund”), there would be a full and complete settlement of all Subject Claims against the Released Defendants.² The Settlement Fund, less (i) any Taxes; (ii) the notice and administration costs of the Settlement; (iii) any award made by the Court pursuant to the Fee and Expense Application; (iv) any service awards to Plaintiffs; and (v) the remaining administration expenses and any other attorney and administrative costs, fees, payments or awards subsequently approved by the Court, is referred to herein as the “Net Settlement Fund.”

By its Order Preliminarily Approving Settlement and Providing for Notice dated September 2, 2015 (ECF No. 245) (the “Preliminary Approval Order”), the Court directed that the Notice of Pendency of Proposed Settlement of Class Action (the “Notice”) and the Proof of Claim and Release form (“Claim Form” or “Claim”) be mailed to all Settlement Class Members that could be identified with reasonable effort, in accordance with the provisions governing the mailing of the Notice and Claim Form that were set forth in the Stipulation. The mailing of the Notice and Claim Form was conducted in accordance with the Preliminary Approval Order.

Thereafter, the Court held a hearing on January 21, 2016 to consider, among other things, whether the proposed Settlement should be granted final approval. By its Order of final judgment and order of dismissal with prejudice dated February 17, 2016 (“Judgment Order”)

² The term “Released Defendants” is defined in the Stipulation as “Wells Fargo Bank, N.A., Wells Fargo & Co., and each of their present and former parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present and former directors, officers, employees, principals, investors, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of them.”

(ECF No. 294), the Court: (i) approved the Settlement, finding it to be fair, reasonable, and adequate in all respects; (ii) found that the notice procedures constituted the best and most reasonable notice practicable under the circumstances; and (iii) dismissed the Action with prejudice in its entirety. In addition, the Court retained continuing jurisdiction over, among other things, implementing the Settlement, including any distribution or disposition of the Settlement Fund or Net Settlement Fund, including interest earned thereon. *See* Judgment Order, ¶11. In addition, the Court approved the Plan of Allocation set forth in the Notice. *See* Judgment Order, ¶9. On September 6, 2017, the Court granted Plaintiffs’ motion to modify the Plan of Allocation (the “Allocation Modification Order”).

Moreover, the Court appointed GCG as the Claims Administrator in connection with the Settlement to supervise and administer the notice procedure as well as to process Claims. *See* Preliminary Approval Order, ¶8. GCG has consented to this Court’s jurisdiction.

THE SETTLEMENT FUND

Pursuant to the terms of the Stipulation, Defendants caused the sum of \$25,750,000 to be deposited into the Escrow Account established by Plaintiffs’ Counsel for the benefit of the Settlement Class. The Court then awarded \$8,583,332 in attorneys’ fees, \$211,042 in expenses and a \$10,000 client service award to each of the four Named Plaintiffs, leaving \$16,915,626 plus interest in the Net Settlement Fund to pay administration costs and for distribution to Eligible Claimants. *See* Judgment Order, at 11-13.

CLAIMS ADMINISTRATION

In accordance with the Notice, Class Members who fell within the Post-Sale category who wished to participate in the distribution were required to file a Proof of Claim by March 16, 2016, and each Class Member who fell within the Active and Paid-in-Full categories would

automatically receive a distribution from the Net Settlement Fund as calculated in accordance with the Plan of Allocation using transactional data from Wells Fargo's records. Bareither Decl., ¶4. GCG employees have carefully reviewed, processed and analyzed the Claims and transactional data submitted in connection with the Settlement. *Id.*, ¶5.

ADMINISTRATIVE ACTIONS AND DETERMINATIONS

I. Post-Sale Class Members

After eliminating Proofs of Claim filed by Class Members who were not required to file claims and duplicate or co-borrower claims, GCG received a total of 5,108 unique Proofs of Claim for Post-Sale loans. *Id.*, ¶6. Of the 5,108 Proofs of Claim submitted for Post-Sale loans, 825 included documentary evidence to support the payment of the property inspection fees claimed, and the remaining 4,283 included no or inadequate documentary proof. *Id.*, ¶7. On September 7, 2017, GCG mailed deficiency letters to approximately 4,350 Post-Sale Class Members who submitted Proofs of Claim with no or inadequate documentary evidence. *Id.*, ¶8. The notices advised claimants that they did not include adequate documentation to support their claim as required, but that they are eligible for a \$5 award with no further action on their part. Should the claimant wish to dispute the determination that their claim was inadequately documented or to request review by the Court, they were to respond no later than September 26, 2017. *Id.*, ¶9.

GCG also received Proofs of Claim from individuals who could not be identified based on the information provided or whose names were not found on the list of Class Members provided in October or December 2015. *Id.*, ¶10. Accordingly, on September 7, 2017, GCG mailed rejection letters to approximately 180 of these individuals, informing them that GCG was unable to establish that they were Class Members in this settlement. *Id.* If they disagreed with

this determination, they were to submit a signed written response with supporting documentation, including their property address and documents evidencing their claimed payments of property inspection fees. *Id.* Claimants' responses to the deficiency and rejection letters were scanned into the database, carefully reviewed and evaluated. If a claimant's response corrected the deficiency, their record was updated to reflect the change in status. *Id.*, ¶11.

GCG received letters from 19 Claimants contesting GCG's administrative determination with respect to their Proofs of Claim. *Id.*, ¶12. A total of 5 of those claims did not supply any documentary evidence with their claims or responses; a total of 9 supplied enough documentary evidence to cure their deficiencies; and the remaining 5 supplied some additional documentation, however, the documentation supplied was insufficient to support a larger recognized loss than the \$5 flat distribution payment. *Id.* GCG has been in communication with all but one of these claimants, and 14 have withdrawn their request for Court review. *Id.*, ¶13. Despite GCG's efforts, the remaining 5 claimants are still seeking Court review (the "Contested Claims"). *Id.*; *see also* Exhibit B to Bareither Decl. A list of the 5 claimants seeking Court review is attached as Exhibit B to the Bareither Declaration, along with a summary description of each claim and the reason why GCG rejected each of the 5 claims. *Id.*, ¶14. Plaintiffs respectfully request that the Court accept GCG determinations and reasons for rejecting each of the 5 claims.

II. Active and Paid-in-Full Class Members

In October 2015 GCG caused over 1,470,000 Postcard Notices to be mailed to Class Members whose loans fell into the Active or Paid-in-Full categories. These notices informed Active and Paid-in-Full Class Members that because their Recognized Claim would be calculated using Wells Fargo's records, they would automatically receive a distribution from the

Net Settlement Fund. *Id.*, ¶15. In December 2015, GCG received transactional data for 1,302,603 Active and Paid-in-Full Class Members from Plaintiffs' Counsel. This transactional data was extracted from a larger set of data produced by Wells Fargo in this litigation by Plaintiffs' data analytics firm, Driven Inc., as described in the Declaration of Jonathan Swerdloff ("Swerdloff Declaration"). GCG utilized this data to calculate the Recognized Claim in accordance with the Plan of Allocation for each of these Class Members. *Id.*, ¶16. There were no eligible transactions under the Plan of Allocation for 167,578 Active and Paid-in-Full loans because inspection fees assessed by Wells Fargo had been either reversed, credited, waived or not paid with respect to these loans. The Recognized Claim for each of these Class Members is zero under the terms of the Settlement. *Id.*, ¶17.

III. Administrative Determinations

Pursuant to the Plan of Allocation, each Post-Sale Claimant and Active or Paid-in-Full Class Member ("Eligible Recipient") shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Claim as compared to the total Recognized Claims of all Eligible Recipients. *Id.*, ¶18. With the Court-approved modifications, each Post-Sale Claimant who submitted a Proof of Claim with no or inadequate documentary evidence to support the claimed payment of property inspection fees shall receive a flat distribution of \$5, and each otherwise eligible Active and Paid-in-Full Class Member who would otherwise receive a check less than \$1.00 based on their *pro rata* share of the Net Settlement Fund will now receive a minimum distribution amount of \$1.00. *See* Allocation Modification Order; Bareither Decl., ¶18. Upon approval by the Court, GCG will prepare and mail checks to Eligible Recipients for their *pro rata* share of the Net Settlement Fund. *Id.*, ¶18. GCG has compiled a

list of Claimants and Class Members and their ultimate disposition. *Id.*, ¶19; *see also* Exhibit C to Bareither Decl.

FEES AND EXPENSES OF CLAIMS ADMINISTRATOR

In accordance with GCG's agreement with Plaintiffs' Counsel to act as the Claims Administrator in connection with the Settlement of the Action, GCG is responsible for, among other things, disseminating notice of the Settlement to the Settlement Class, processing Claim Forms, and allocating and distributing the Net Settlement Fund to eligible Class Members. In July 2015, Co-Lead Counsel negotiated a cap of \$3,250,000 for the claims administration. Bareither Decl., ¶20. In the Preliminary Approval Order dated September 2, 2015, this Court authorized Co-Lead Counsel to pay GCG up to the \$3,250,000 cap for notice and claims administration costs without further order of the Court. Preliminary Approval Order, ¶15.

Co-Lead Counsel received regular reports of all of the work GCG performed with respect to the administration of the Settlement, and authorized the claims administration work performed herein. Bareither Decl., ¶20. The total amount of GCG's fees and out-of-pocket expenses incurred through October 15, 2017, is \$2,154,836.93. *Id.* To complete this matter, GCG anticipates additional fees and out-of-pocket expenses will significantly exceed the \$3,250,000 negotiated cap. *Id.* Accordingly, in the event that GCG's actual cost to conduct the Initial Distribution and any redistribution of the Net Settlement Fund exceeds the agreed cap, Plaintiffs anticipate filing a motion with the Court requesting that GCG's additional costs above the negotiated cap be paid to GCG from any residual funds remaining in the Net Settlement Fund prior to the disbursement to the United Way.

DISTRIBUTION PROCESS

The Net Settlement Fund is ready to be distributed at this time. Plaintiffs' Counsel, therefore, respectfully request that the Court direct GCG to distribute the Net Settlement Fund in accordance with the proposed plan for distribution set forth in the Bareither Declaration. *See generally* Bareither Decl., ¶21. If GCG's administrative determinations are approved by the Court, each Eligible Recipient will receive their *pro rata* share of the Net Settlement Fund based on the ratio of his, her, or its Recognized Claim calculated pursuant to the Plan of Allocation to the total Recognized Claims of all Eligible Recipients. *Id.* GCG will implement the provisions of the modified Plan of Allocation including the flat distribution of \$5 to Post-Sale Claimants who did not cure their documentary evidence deficiency and the minimum distribution amount to Active and Paid-in-Full Class Members who would otherwise receive a check for less than \$1. *Id.* After accounting for these minimum payments, GCG will re-calculate the *pro rata* share of the Net Settlement Fund for Eligible Recipients. This *pro rata* share is the Eligible Recipient's "Distribution Amount." *Id.*

It is expected that not all of the checks sent to the Eligible Recipients will be cashed promptly and that some of these checks will remain uncashed.³ Pursuant to the Plan of Allocation, to the extent that any proceeds remain in the Net Settlement Fund after GCG has made reasonable and diligent efforts to have Eligible Recipients cash their distributions, any balance remaining in the Net Settlement Fund six months from the date of the initial distribution of the Net Settlement Fund shall be re-distributed to Eligible Recipients with a *pro-rata* share of at least \$25.00 from such re-distribution who negotiated the checks sent to them in the initial distribution, after payment of any unpaid costs or fees incurred in administering the Net

³ In order to encourage Eligible Recipients to promptly cash their checks, the proposed Order Approving Distribution of Net Settlement Fund sets forth that all distributions will bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED 90 DAYS AFTER ISSUE DATE." Bareither Decl., ¶21.

Settlement Fund for re-distributions. *See Id.* As further set forth in the Plan of Allocation, if, six months after such redistribution, any funds remain in the Net Settlement Fund, then Plaintiffs will either file a motion with the Court requesting that GCG be reimbursed for actual costs incurred in excess of the \$3,250,000 cap, or will contribute such balance to the United Way, with the funds earmarked for financial education classes. *Id.*

RELEASE OF CLAIMS

In order to allow for the full and final distribution of the Net Settlement Fund, it is necessary to bar any further claims against the Net Settlement Fund beyond the amount allocated to Eligible Recipients, and to provide that all persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claim Forms submitted in connection with the Settlement of this Action, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund, be released and discharged from any and all claims arising from such involvement. Accordingly, Plaintiffs' Counsel respectfully request that this Court release and discharge all Persons who are involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the Claims submitted in connection with the Settlement of this Action, or who are otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund from any and all claims arising out of such involvement, and, pursuant to the release terms of the Settlement, bar all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, from making any further claim against the Net Settlement Fund beyond the amount allocated to them by the Settlement as approved by the Court or against the parties released pursuant to the Settlement.

RECORD RETENTION AND DESTRUCTION

Plaintiffs' Counsel respectfully request that the Court authorize GCG to dispose of paper copies and all supporting documentation of Claim Forms one year after the Second Distribution, and all electronic copies of the same one year after all funds in the Net Settlement Fund have been distributed.

CONCLUSION

Based on the foregoing, Plaintiffs' Counsel respectfully request that the Court approve the Motion for Distribution of Net Settlement Fund and enter the [Proposed] Order Approving Distribution of Net Settlement Fund submitted herewith.

Dated: December 5, 2017

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2017, the foregoing Memorandum in Support of Plaintiffs' Motion for Distribution of Net Settlement Fund was electronically filed via this Court's CM/ECF filing system, which provides electronic notice to all parties so registered. Any parties not so registered were served a copy via regular U.S. Mail.

/s/ Deborah Clark-Weintraub

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